COOPERATION AGREEMENT FOR
HOUSING AND URBAN DEVELOPMENT COMMUNITY DEVELOPMENT AND PLANNING GRANTS FOR PROGRAM YEARS 2027-28, 2028-29, 2029-30 AND SUBSEQUENT RENEWAL FOR PROGRAM YEARS 2030-31, 2031-32, AND 2032-33, UNLESS TERMINATED

WHEREAS, This Agreement is made and entered into this____day of _____, 2026, by and between San Bernardino County, of the State of California, hereinafter referred to as "COUNTY", and the City of Chino, a city within COUNTY, hereinafter referred to as "CITY."

WHEREAS, the U.S. Department of Housing and Urban Development, hereinafter called HUD, provides Community Development Block Grant, Catalog of Federal Domestic Assistance (CFDA) #14.218, HOME Investment Partnerships, CFDA #14.239, and Emergency Solutions Grants, CFDA #14.231, funds and other grants directly to qualified Metropolitan Cities, and Urban Counties via their Community Planning and Development (CPD) Division; and,

WHEREAS, the Housing and Community Development Act of 1974, as amended (Public Law 93-383), hereinafter referred to as ACT, provides that Community Development Block Grant, hereinafter referred to as "CDBG", funds may be used for the support of activities that provide decent housing and suitable living environments and expanded economic opportunities principally for persons of low- and moderate-income; and,

WHEREAS, the Congress of the United States has enacted the Cranston-Gonzalez National Affordable Housing Act, Title II of this Act created the HOME Investment Partnerships Program, hereinafter called “HOME”, that provides funds to states and local governments for the purpose of increasing the number of affordable housing opportunities for low- and moderate income families; and,

WHEREAS, the Congress of the United States provides funding for the Emergency Solutions Grant Program, hereinafter called “ESG”, for the purpose of assisting individuals and families in quickly regaining stability in permanent housing after experiencing a housing crisis or homelessness; and,

WHEREAS, this Cooperation Agreement covers CDBG, HOME, ESG and other HUD entitlement grants; and,

WHEREAS, the COUNTY is a qualified Urban County and hereinafter COUNTY PROGRAM will refer to the COUNTY’s CDBG, HOME, ESG and other CPD grants program as well as to the legislation and regulations that created and funded these programs; and,

WHEREAS, HUD requires Metropolitan Cities and Urban Counties to re-qualify every three (3) years in order to receive an allocation of various grant funds from HUD; and,

WHEREAS, the CITY and COUNTY both desire for the CITY to be a part of the COUNTY PROGRAM so both entities can benefit from increased efficiencies though economies of scale created by having the City’s funding allocation of these grants be added and be a part of the COUNTY PROGRAM for 2027-28, 2028-29, 2029-30 and every three (3) years thereafter; and,

WHEREAS, the CITY and COUNTY agree that the COUNTY shall be solely responsible for administering, managing and directing the COUNTY PROGRAM, including but not limited to the preparation of the Consolidated Plan that is required to be submitted to HUD in order for the COUNTY to have access to COUNTY PROGRAM funds and as such the COUNTY has final authority for selecting activities that will be funded with COUNTY PROGRAM funds; and,

WHEREAS, the execution of this Cooperation Agreement hereinafter referred to as AGREEMENT, is necessary in order to meet the desires of both the CITY and COUNTY of having the CITY be a part of COUNTY PROGRAM; and,

WHEREAS, the Chief Executive Officer of the COUNTY is authorized to execute this AGREEMENT on the

COUNTY's behalf; and,

WHEREAS, the City Manager of the CITY is authorized to execute this AGREEMENT on the CITY's behalf.

NOW THEREFORE, in consideration of the mutual covenants herein set forth and the mutual benefits to be derived therefrom, the parties agree as follows:

1. **DEFINITIONS**
   - A. **Amendment:** A change, correction, clarification, or deletion to an auto-renewal cooperation agreement. An amendment may be necessary due to shifting requirements over time at the federal, state, or local government level.
   - B. **Auto-Renewal Cooperation Agreement:** A Cooperation Agreement or Joint Agreement containing an "auto-renewal" provision stating the agreement will automatically renew for one additional three-year qualification period after the initial three-year qualification period (enabling the agreement to be in effect for a total of six years).
   - C. **CDBG Entitlement Program:** HUD grant program which provides annual CDBG grants on a formula basis to Metropolitan Cities and Urban Counties to develop viable urban communities, provide decent housing and suitable living environments, and expand economic opportunities for low- and moderate-income people.
   - D. **CITY:** An incorporated area that is operated by a local governing body (for example, a city council).
   - E. **Cooperation Agreement:** Legal agreement between an Urban County and participating cities, which explains roles and responsibilities, restrictions, and CDBG program requirements. Cooperation agreements between the county and participating cities are required in counties that do not have essential powers in cities (most counties). Cooperation agreements are also required – even for counties that have essential powers in their cities – if the Urban County plans to award CDBG funds to participating cities or to carry out activities within the jurisdictional boundaries of those cities.
   - F. **CPD:** HUD's Office of Community Planning and Development.
   - G. **Delegate Agency Agreement:** A legal agreement between an Urban County and a Metropolitan City in the Urban County. A delegate agency agreement allows an Urban County to manage and administer the Metropolitan City's CDBG grant in addition to the county's own CDBG grant.
   - H. **Emergency Solutions Grant Program (ESG):** Authorized under Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act, as amended. ESG funds are allocated by HUD to support local jurisdictions in addressing homelessness through eligible activities, including street outreach, emergency shelter, homelessness prevention, rapid re-housing, and HMIS administration.
   - I. **Entitlement Communities Division:** The division at CPD Headquarters responsible for administering the CDBG Entitlement Program and preparing the Urban County Notice. This division can address any questions about the Urban County qualification process and provide extensions for deadlines in this Notice.
   - J. **Essential Powers:** When an Urban County has legal authority to conduct "essential community development and housing assistance activities" in its unincorporated areas and/or in its participating cities (without consent from cities' governing bodies). These essential activities include actions like acquiring property for reuse as low- and moderate-income housing, directly rehabilitating or providing financial assistance for housing, supporting low-rent housing activities, disposing of land to private developers for redevelopment, and condemning property for low-income housing. Most states only grant counties essential powers in unincorporated areas, but not in incorporated areas (cities).
   - K. **HOME Consortium:** A method for local governments that would not otherwise qualify for HOME funding to join with other contiguous units of local government to directly participate in the HOME program.
   - L. **Incorporated Areas:** areas that have been incorporated as an official entity under state law. These areas have a legally defined boundary and an active, functioning government.
   - M. **Letter:** A signed letter on official city or county government letterhead. An attached signed PDF letter on official city or county government letterhead may be sent via email.
   - N. **Metropolitan City:** A city within a metropolitan area which is the principal city of such area, as defined by the Office of Management and Budget (OMB), or any other city, within a metropolitan area, which

has a population of 50,000 or more. Any city that was classified as a Metropolitan City for at least two years shall remain classified as a Metropolitan City. Metropolitan Cities are eligible to directly receive CDBG grant funding on a formula basis.

O. **State:** The State of California is the state government that provides funding, oversight, and programs to support housing, community development, and services for residents in California.

P. **Unincorporated Areas:** Areas in a county that have not been incorporated as cities, towns, townships, or villages. These areas may have a name, but they don't have legally defined boundaries or governments.

Q. **Urban County:** A county that has met population thresholds to qualify to directly receive CDBG, HOME and ESG funds from HUD. Urban Counties are Entitlement communities under the CDBG, HOME and ESG Entitlement Program. Refer to the official definition of Urban Counties at Section 102(a)(6) of the HCDA for more information.

R. **U.S. Department of Housing and Urban Development (HUD):** The federal agency that provides funding and guidance to support housing, community development, and programs that assist low- and moderate-income individuals and families.

2. **GENERAL**

This AGREEMENT gives the COUNTY authority to undertake or assist in activities starting on July 1, 2027 for Program Years 2027-2028, 2028-29, 2029-30, which will be funded from COUNTY PROGRAM funds, which will include the CITY's funding allocations, and from any program income generated from the expenditure of such funds. COUNTY and CITY agree to cooperate to undertake, or assist in undertaking, essential community development and housing assistance activities. This AGREEMENT shall automatically renew for one successive three-year Urban County qualification period, until such time as the City Council for the CITY or the COUNTY Board of Supervisors elects to terminate this AGREEMENT at the conclusion of the preceding three-year term. This AGREEMENT covers all COUNTY PROGRAM funds and other associated grants administered by HUD through its CPD Division or its successor.

By executing this AGREEMENT, CITY understands that it may not apply for grants under the Small Cities or State CDBG Programs from appropriations for program years during the term of this AGREEMENT, and CITY may not participate in a HOME consortium other than the COUNTY HOME program, regardless of whether COUNTY receives a HOME formula allocation. The CITY may only participate in the COUNTY's ESG program and cannot receive funds directly from HUD or the State.

The purpose of the Delegate Agency Agreement (Exhibit 1), which accompanies this AGREEMENT, and its subsequent ATTACHMENTS, is to enable CITY to implement projects and or programs funded with CDBG funds as described in SECTION 16 OTHER AGREEMENTS.

3. **TERM**

The term of this AGREEMENT shall be for program years 2027-28, 2028-29, 2029-30 and shall commence as of July 1, 2027. This AGREEMENT will renew automatically for participation for one successive three-year Urban County qualification period, unless an earlier date of termination is fixed by HUD pursuant to COUNTY PROGRAM or until such time as the City Council for CITY or COUNTY Board of Supervisors elects to terminate this AGREEMENT at the conclusion of a three-year term. This AGREEMENT shall remain in effect until all COUNTY PROGRAM grant funds covered under the terms of this AGREEMENT, and any program income generated from the expenditure of such funds, are expended, and the funded activities are completed. This AGREEMENT may not be terminated or withdrawn by the parties for any circumstance or reason during the term of this AGREEMENT.

In order for the automatic renewal provisions of this AGREEMENT to be approved, HUD mandates that this AGREEMENT include a stipulation that requires CITY and COUNTY to adopt any amendment(s) necessary to meet the requirements for cooperation agreements set forth in an Urban County Qualification Notice applicable for a subsequent three-year urban county qualification period, and to submit such amendment to HUD as provided in the Urban County Qualification Notice and that such

failure to comply will void the automatic renewal for such qualification period.

In addition, as part of the Urban County re-qualification process the COUNTY goes through every three (3) years, COUNTY will notify CITY, via a letter, that CITY has the ability to terminate this AGREEMENT and not be included as part of the submission by COUNTY to HUD for re-qualifying as an Urban County for the subsequent three (3) year qualification period. CITY agrees to send a timely response letter to COUNTY stating its intentions to either continue to be a part the COUNTY PROGRAM or to elect to terminate this AGREEMENT and not be a part of the COUNTY's upcoming submission to HUD to re-qualify as an Urban County for the subsequent three (3) year renewal period.

If COUNTY is due to reauthorize and re-execute the Cooperation Agreement at the end of the six-year maximum but experiences an emergency preventing timely renewal, the Cooperation Agreement may auto-renew for one additional three year qualification period (maximum total of nine years) only upon prior written approval by HUD's CPD Field Office, following COUNTY's written request explaining the emergency and the need for the exception.

The COUNTY will submit to HUD the letter notifying CITY of its ability to terminate this AGREEMENT as well as the CITY's response letter. COUNTY will also submit to HUD a written legal opinion provided by COUNTY Counsel stating that the terms and provisions continue to be authorized under state and local law and that the AGREEMENT continues to provide full legal authority for COUNTY.

This automatic renewal procedure will remain the same even if the CITY is recognized by HUD as a Metropolitan City and therefore could receive CDBG funds directly from HUD.

The CITY will provide CITY Council minutes approving the CITY being a part of the COUNTY Urban County program and to the automatic renewal procedure.

4. **PREPARATION OF APPLICATION**

COUNTY, by and through its Community Development and Housing Department (CDH), shall be responsible for preparing and submitting to HUD all necessary applications, subject to approval of the COUNTY Board of Supervisors, for the COUNTY PROGRAM entitlement grants. This duty shall include the preparation and processing of COUNTY Housing, Community and Economic Development Needs Identification Report, Citizen Participation Plans, the County Consolidated Plan, and other related items associated with COUNTY PROGRAM grants, which satisfy its associated application requirements and regulations. All documents will include information provided by CITY.

5. **COMPLIANCE WITH FINAL PROGRAMS AND PLANS**

COUNTY and CITY shall comply in all respects with final Community Development plans and programs and the Consolidated Plan which are developed through mutual cooperation pursuant to the application requirements of COUNTY PROGRAM and their regulations and approved by HUD.

6. **COMPLIANCE WITH LEGISLATION AND REGULATIONS**

COUNTY and CITY shall comply with all applicable requirements of COUNTY PROGRAM and associated regulations, in utilizing grant funds under legislation that created and governs these grants, and shall take all actions necessary to assure compliance with COUNTY certifications required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, and that all grants will be conducted and administered in conformity with all federal laws and regulations specified in HUD's Urban County Notice, including but not limited to:

A. Title VI of the Civil Rights Act of 1964 (and implementing regulations at 24 CFR Part 1);
B. Fair Housing Act (and implementing regulations at 24 CFR Part 100), including the duty to affirmatively further fair housing (AFFH);
C. Section 109 of Title I of the Housing and Community Development Act of 1974 (and implementing regulations at 24 CFR Part 6), which incorporates:
    a. Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8);

b. Title II of the Americans with Disabilities Act of 1990 (28 CFR Part 35);
c. Age Discrimination Act of 1975 (24 CFR Part 146);
d. Section 3 of the Housing and Urban Development Act of 1968;
e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24)
f. Section 104(d) of Housing and Community Development Act of 1974 (24 CFR Part 42)

D. National Environmental Policy Act of 1969;
E. Executive Order 11988;
F. and all other applicable federal laws and regulations.

COUNTY shall not fund activities in, or in support of, any participating unit of general local government (CITY) that impedes the COUNTY's ability to comply with its fair housing certification required under Section 104(b) of Title I of the Housing and Community Development Act of 1974, including the obligation to affirmatively further fair housing.

CITY acknowledges that failure to comply with fair housing requirements may constitute noncompliance by the COUNTY and may result in funding sanctions or other remedial actions by HUD.

To ensure compliance with applicable regulations, CITY shall maintain appropriate records and provide documentation upon request.

CITY agrees to adhere to the Delegate Agency Agreement (Exhibit 1 of this AGREEMENT) and its accompanying Attachments.

In order for COUNTY to avoid the risk of losing CDBG funds as a result of CITY not spending CITY CDBG funds in a timely manner as required by the ACT, COUNTY and CITY both agree that COUNTY has the authority to transfer CITY CDBG funds to any CDBG-eligible project/program at COUNTY's sole discretion if CITY is not spending its CDBG funds in a timely manner. Prior to transferring CITY CDBG funds, COUNTY will notify CITY in writing that CITY is at risk of not meeting this timeliness requirement, and therefore, COUNTY will transfer CITY CDBG funds if timeliness is not met. As referred to in SECTION 12 DISPOSITION OF FUNDS, CITY and COUNTY both agree that CITY CDBG funds will be spent, to the greatest extent feasible in a manner CITY desires but COUNTY shall have the final and sole decision as to how CITY CDBG funds are spent.

Furthermore, CITY hereby covenants by and for itself, its successors and assigns, and all persons claiming under or through it that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any project funded by HOME or CDBG funds, nor shall CITY itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in any project funded as a result of this AGREEMENT.

CITY shall refrain from restricting the rental, sale or lease of any project funded as a result of this AGREEMENT on the basis of race, color, creed, religion, sex, marital status, familial status, disability, national origin or ancestry of any person.

CITY and COUNTY agree to cooperate to undertake, or assist in undertaking, community renewal and lower-income housing assistance activities.

CITY and COUNTY understand and agree that they may not sell, trade, or otherwise transfer all or any portion of HUD funds to a Metropolitan City, Urban County, unit of general local government, or insular area that directly or indirectly receives HUD funds in exchange for any funds, credits, or non-Federal considerations, but must use such funds for activities eligible under Title I of the Housing and Community

Development Act of 1974, as amended.

7. **USE OF FORCE**

CITY certifies that it has adopted and is enforcing within its jurisdiction:

A. A policy prohibiting the use of excessive force by law enforcement agencies against any individuals engaged in non-violent civil rights demonstrations; and
B. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations.

CITY further agrees that it shall maintain and enforce these policies as a condition of receiving funds under this AGREEMENT and in compliance with certifications required under Section 104(b) of Title I of the Housing and Community Development Act of 1974.

8. **DRUG AND ALCOHOL FREE WORKPLACE**

In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this AGREEMENT, CITY agrees that CITY employees, while performing services under this AGREEMENT:

A. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
B. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
C. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where CITY or CITY's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

CITY shall inform all employees that are performing service for the COUNTY on COUNTY property, or using COUNTY equipment, of the COUNTY's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the COUNTY.

COUNTY may terminate for default or breach of this AGREEMENT and any other Contract the CITY has with the COUNTY, if the CITY or CITY's employees are determined by the COUNTY not to comply with the above.

9. **CONFLICT OF INTEREST**

CITY shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the COUNTY. CITY shall make a reasonable effort to prevent employees, contractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others, such as those with whom they have family business or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the COUNTY determines a conflict of interest situation exists, any increase in costs associated with the conflict of interest situation may be disallowed by the COUNTY, and such conflict may constitute grounds for termination of the AGREEMENT. This provision shall not be construed to prohibit employment of persons with whom CITY's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

10. **INDEMNIFICATION**

CITY agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification

provision shall apply regardless of the existence or degree of fault of indemnities. The CITY indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

COUNTY agrees to indemnify, defend and hold harmless the CITY, its officers, agents, volunteers, and employees, from any and all claims, actual losses, damages and or liability that may result from the negligent acts, errors or omissions of the COUNTY, its authorized officers, employees, agents, or volunteers arising out of this Contract.

If the Parties are determined to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under this Agreement, each Party shall indemnify the others to the extent of its comparative fault as determined in a legal action.

11. **SELF-INSURANCE**

CITY and COUNTY are authorized self-insured public entities for purposes of general liability, automobile liability, professional liability and workers' compensation. CITY and COUNTY warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against any liabilities arising out of their performance regarding the terms and conditions of this AGREEMENT.

12. **DISPOSITION OF FUNDS**

Unless prohibited by Federal Regulations, COUNTY and CITY agree that, to the greatest extent feasible, CDBG funds will be allocated by COUNTY to CITY out of the funds received pursuant to ACT, according to its proportional demographics, for activities and/or projects prioritized by CITY to alleviate its identified community development needs eligible under ACT. COUNTY, though its Board of Supervisors, shall be responsible for determining the final disposition and distribution of all funds received by COUNTY under ACT and other related grants and for selecting the projects for which such funds shall be used. Both parties agree that COUNTY has the authorization to redistribute such funds when said projects are not implemented in a timely manner as described in SECTION 6, COMPLIANCE WITH LEGISLATION AND REGULATIONS.

HOME funds will be allocated by COUNTY to Developer(s) based on a competitive Notice of Funding Available process to address affordable housing needs by funding activities that are eligible under HOME regulations and COUNTY, by its Board of Supervisors, shall be responsible for determining the final disposition and distribution of all funds received by COUNTY under the HOME program as well as the other COUNTY PROGRAM funds and for selecting the projects for which such funds shall be used.
COUNTY shall be compensated for administering COUNTY PROGRAM and other related grants by utilizing allowable planning and administrative fee(s) and a project implementation fee.

13. **DISPOSITION OF PROGRAM INCOME**

CITY shall inform COUNTY regarding any income generated by the expenditure of COUNTY PROGRAM funds received by CITY. All said income, even if it is received after this AGREEMENT has expired, shall promptly be paid to COUNTY. COUNTY shall be responsible for monitoring and reporting to HUD on the use of any such program income; CITY is required to keep appropriate records and provide reports to COUNTY regarding program income. In the event of COUNTY PROGRAM funds close-out or change in status of CITY under COUNTY PROGRAM funds, any program income that is on hand or received subsequent to the close-out or change in status shall be paid to COUNTY. Any income generated from the disposition or transfer of real property prior to any such close-out or change of status shall be treated the same as program income. Any income generated from the disposition or transfer of real property subsequent to any such close-out or change of status shall promptly be paid to COUNTY.

14. **DISPOSITION OF REAL PROPERTY**

This section sets forth the standards which shall apply to real property acquired or improved in whole or

in part using CDBG and HOME funds that are allocated to (within the control of) CITY. Prior to any modification or change in the use of said real property from the use or ownership planned at the time of its acquisition or improvements, CITY shall notify COUNTY and obtain authorization for said modification or change. CITY shall reimburse COUNTY with non-CDBG and non-HOME funds in an amount equal to the current fair market value (less any portion thereof attributable to expenditures of non-CDBG or non-HOME funds) of property acquired or improved with CDBG or HOME funds that is sold or transferred for a use, which does not qualify under CDBG and HOME regulations.

15. **EFFECTIVE DATES**

This AGREEMENT shall be initially effective for all purposes for the period beginning July 1, 2027 and ending June 30, 2030. Thereafter, this AGREEMENT will automatically renew for one successive three-year Urban County qualification period, commencing July 1, 2030 through June 30, 2033 when the COUNTY re-qualifies as an Urban County, until such time as the CITY or COUNTY elects to terminate the AGREEMENT at the conclusion of the preceding term. This AGREEMENT will be executed by COUNTY and CITY, properly submitted to HUD, the grantor, by the designated deadline, and approved by HUD.

16. **OTHER AGREEMENTS**

Pursuant to federal regulations at 24 CFR 570.501(b), CITY is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement set forth in federal regulations at 24 CFR 570.503 and other related regulations. COUNTY and CITY as part of this AGREEMENT are also entering into a Delegate Agency Agreement (Exhibit 1 of this AGREEMENT) and its accompanying ATTACHMENTS, for the purpose of having CITY implement CDBG-funded projects and/or programs. COUNTY and CITY both agree it would be more effective and efficient if CITY implements projects and or programs funded with CITY CDBG funds. The purpose and intent of the Delegate Agency Agreement is to create a mechanism whereby COUNTY delegates its authority, under its Urban County agreement with HUD to CITY, thereby enabling CITY to implement projects and programs funded with CITY CDBG funds while the COUNTY ensures all associated rules and regulations are followed. Prior to disbursing any CDBG funds to CITY, COUNTY, shall execute and adhere to the Delegate Agency Agreement and related documents with CITY. Said agreement shall remain in effect during any period that CITY has control over CDBG funds, including program income.

The Delegate Agency Agreement provides a detailed account of the policies and procedures on how a project is officially assigned by COUNTY to CITY for implementation and the steps that need to be completed by both CITY and COUNTY (above and beyond the approval of this AGREEMENT) prior to any obligation or expenditure of funds whereby the CITY will seek reimbursement from COUNTY. Any obligation and or expenditure made by CITY without the expressed written approval by COUNTY may result in CITY not being able to utilize CDBG funds.

17. **ELECTRONIC SIGNATURES**

This AGREEMENT may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same AGREEMENT. The parties shall be entitled to sign and transmit an electronic signature of this AGREEMENT (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed AGREEMENT upon request.

I**N WITNESS WHEREOF,** COUNTY and CITY have each caused this AGREEMENT to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

►

Luther Snoke, Chief Executive Officer

Dated:

CITY OF CHINO

By: ►

(Authorized signature - sign in blue ink)

Name: Linda Reich

Title: City Manager

(Print or Type)

Dated:

Address: P.O Box 667
Chino, CA 91708-0667

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
►	►	►
Suzanne Bryant, Deputy County Counsel		Robert Gilliam, Acting Director
Date	Date	Date

EXHIBIT 1
COMMUNITY DEVELOPMENT BLOCK GRANT
CITY-COUNTY DELEGATE AGENCY AGREEMENT
FOR PROGRAM YEARS 2027-28, 2028-29, 2029-30 AND SUBSEQUENT RENEWAL FOR PROGRAM YEARS 2030-31, 2031-32, AND 2032-33, UNLESS TERMINATED

WHEREAS, this Delegate Agency Agreement, herein after referred to as DA AGREEMENT, accompanies the Cooperation Agreement, made and entered into, by and between San Bernardino County, a political subdivision of the State of California, referred to as "COUNTY", and the City of Chino, a municipal corporation located within the boundaries of San Bernardino County, referred to as "CITY"; and

WHEREAS, COUNTY has been designated an "Urban County" by the United States Department of Housing and Urban Development, hereinafter referred to as "HUD", as that term is defined in Title I of the Housing and Community Development Act of 1974 as amended, hereinafter referred to as "ACT"; and

WHEREAS, COUNTY will administer a Community Development Block Grant (CDBG) program (CFDA No. 14.218) that includes the development of a Consolidated Submission of the HUD Housing and Community Development Grant programs, hereinafter referred to as "CONSOLIDATED PLAN", which constitutes COUNTY's application for federal assistance under said ACT; and,

WHEREAS, CITY and COUNTY have entered into a Cooperation Agreement so as to enable CITY to be a part of COUNTY's CDBG program, commencing with Program Years 2027-28, 2028-29, 2029-30 and set to automatically renew for one successive three-year Urban County qualification period while the COUNTY is designated as an Urban County, to which this DA AGREEMENT is subordinate and supplementary agreement per SECTION 16 of Cooperation Agreement; and,

WHEREAS, COUNTY administers a CDBG program for a number of cooperating cities, and in the unincorporated areas of San Bernardino County, through its Community Development and Housing Department, hereinafter referred to as "CDH"; and,

WHEREAS, CITY has the ability, expertise and resources to manage and administer CDBG-funded projects/programs and agrees to adhere to all rules, regulations and related requirements associated with the utilization of CDBG funds; and,

WHEREAS, CITY desires to assume the responsibility of project implementation within its corporate limits in cooperation with COUNTY; and,

WHEREAS, both COUNTY and CITY seek to coordinate their community development and neighborhood revitalization efforts in order to fully utilize all available resources while increasing efficiencies though economies of scale associated with the planning and administration of a large scale CDBG program; and

NOW, THEREFORE, it is understood and agreed by and between the parties hereto as follows:

1. DEFINITONS

A. **Amendment:** A change, correction, clarification, or deletion to an auto-renewal cooperation agreement. An amendment may be necessary due to shifting requirements over time at the federal, state, or local government level.
B. **Auto-Renewal Delegate Agency Agreement:** A delegate agency agreement which contains an “auto-renewal” provision stating the agreement will automatically renew for one additional three-year qualification period after the initial three-year qualification period (enabling the agreement to be in effect for a total of six years).
C. **CDBG Entitlement Program:** HUD grant program which provides annual CDBG grants on a formula basis to Metropolitan Cities and Urban Counties to develop viable urban communities, provide decent housing and suitable living environments, and expand economic opportunities for low- and moderate-income people.
D. **CITY:** An incorporated area that is operated by a local governing body (for example, a city council).
E. **Cooperation Agreement:** Legal agreement between an Urban County and participating CITYs, which explains roles and responsibilities, restrictions, and CDBG program requirements. Cooperation

agreements between the county and participating cities are required in counties that do not have essential powers in cities (most counties). Cooperation agreements are also required – even for counties that have essential powers in their cities – if the Urban County plans to award CDBG funds to participating cities or to carry out activities within the jurisdictional boundaries of those cities.

F. **CPD:** HUD's Office of Community Planning and Development.
G. **Delegate Agency Agreement:** A legal agreement between an Urban County and a Metropolitan City in the Urban County. A delegate agency agreement allows an Urban County to manage and administer the Metropolitan City's CDBG grant in addition to the county's own CDBG grant.
H. **Entitlement Communities Division:** The division at CPD Headquarters responsible for administering the CDBG Entitlement Program and preparing this Urban County Notice. This division can address any questions about the Urban County qualification process and provide extensions for deadlines in this Notice.
I. **Essential Powers:** When an Urban County has legal authority to conduct "essential community development and housing assistance activities" in its unincorporated areas and/or in its participating CITYs (without consent from CITYs' governing bodies). These essential activities include actions like acquiring property for reuse as low- and moderate-income housing, directly rehabilitating or providing financial assistance for housing, supporting low-rent housing activities, disposing of land to private developers for redevelopment, and condemning property for low-income housing. Most states only grant counties essential powers in unincorporated areas, but not in incorporated areas (CITYs).
J. **Incorporated Areas:** Areas that have been incorporated as an official entity under state law. These areas have a legally defined boundary and an active, functioning government.
K. **Letter:** A signed letter on official city or county government letterhead. An attached signed PDF letter on official city or county government letterhead may be sent via email.
L. **Metropolitan City:** A city within a metropolitan area which is the principal city of such area, as defined by the Office of Management and Budget (OMB), or any other city, within a metropolitan area, which has a population of 50,000 or more. Any city that was classified as a Metropolitan City for at least two years shall remain classified as a Metropolitan City. Metropolitan Cities are eligible to directly receive CDBG grant funding on a formula basis.
M. **State:** The State of California is the state government that provides funding, oversight, and programs to support housing, community development, and services for residents in California.
N. **Unincorporated Areas:** Areas in a county that have not been incorporated as cities, towns, townships, or villages. These areas may have a name, but they don't have legally defined boundaries or governments.
O. **Urban County:** A county that has met population thresholds to qualify to directly receive CDBG, HOME and ESG funds from HUD. Urban Counties are Entitlement communities under the CDBG, HOME and ESG Entitlement Program. Refer to the official definition of Urban Counties at Section 102(a)(6) of the HCDA for more information.
P. **U.S. Department of Housing and Urban Development (HUD):** The federal agency that provides funding and guidance to support housing, community development, and programs that assist low- and moderate-income individuals and families.

2. PURPOSE

This DA AGREEMENT, which is Exhibit 1 to the Cooperation Agreement, is made pursuant to the provisions of Article 1, Chapter 5, Division 7, Title I of the Government Code of the State of California (commencing with Section 6500), relating to public agencies. The purpose of this DA AGREEMENT is to enable CITY to implement CITY-CDBG funded projects or programs while adhering to the provisions of the Cooperation Agreement in carrying out CDBG activities that have been approved by COUNTY for CITY in accordance with the CONSOLIDATED PLAN. The purpose will be accomplished pursuant to the requirements of the ACT, its regulations and other federal, state and county laws and policies in the manner hereinafter set forth. This DA AGREEMENT is not a standalone agreement and is only valid as a component of the Cooperation Agreement; whereas the Cooperation Agreement is a standalone agreement and will be valid even if this DA AGREEMENT no longer exists. In absence of this DA AGREEMENT, the CITY would not be able to implement any CDBG-funded projects or programs; however the COUNTY would still be able to implement CITY or COUNTY CDBG-funded projects and or programs as authorized under the Cooperation Agreement.

Unless specified otherwise, CDH shall have the authority to represent COUNTY regarding the terms and conditions of this DA AGREEMENT and the administration thereof.

3. TERM

This DA AGREEMENT shall become initially effective starting Program Years 2027-2028, 2028-29, 2029-30, beginning on July 1, 2027 and ending June 30, 2030. Thereafter, commencing July 1, 2030 this DA AGREEMENT, as part of the Cooperation Agreement, will automatically renew for one successive three-year Urban County qualification period for Program Years 2030-31, 2031-32 and 2032-33, when the COUNTY re-qualifies as an Urban County, until such time as the CITY or COUNTY elects to terminate at the conclusion of a 3-year term. Even though this DA AGREEMENT does not stand alone, it may be extended beyond the 3-year term in order to complete the construction of a previously funded project(s). COUNTY, through its Chief Executive Officer or CDH Deputy Executive Officer, or Director, may grant an extension of up to six (6) months to the term of this DA AGREEMENT for the purpose of completing CITY's projects/activities that are underway and which cannot be completed during the term of this DA AGREEMENT. CITY must request any such extension in writing. Any extension will only be effective if granted in writing by COUNTY. Maintenance and operation and monitoring requirements for facilities developed under the terms of this DA AGREEMENT, as described in SECTION 10 MAINTENANCE AND OPERATION OF FACILITIES and SECTION 16 MONITORING, shall be in effect and continue in full force as prescribed in this section of the Cooperation Agreement and continue even if the Cooperation Agreement is terminated or has expired.

4. AUTHORIZATION OF PROJECT/ACTIVITY

CITY shall not initiate nor incur expenses for any CDBG-funded project or activity covered under the terms of this DA AGREEMENT prior to receiving written authorization from COUNTY. Written authorization will be accomplished when Attachments A (Request to Initiate Project or Activity) and B (Project or Activity Description) to this DA AGREEMENT have been completed for a CDBG-funded project or activity and signed by CITY and countersigned by CDH. Any such authorized Project or Activity shall hereinafter be referred to as an "AUTHORIZED PROJECT."

5. IMPLEMENTATION OF AUTHORIZED PROJECT

CITY agrees to implement AUTHORIZED PROJECTS in the manner prescribed in the Delegate Agency Coordination Procedures (Attachment C), using the forms and language contained in the Delegate Agency Construction Contract Provisions (Attachment D), and agrees to comply with all applicable local, county, state and federal regulations associated with the implementation of CDBG projects and with DA AGREEMENT.

CITY may contract for all necessary services to complete AUTHORIZED PROJECTS described on its executed Attachments A and B provided that contracts are submitted to and approved in writing by CDH prior to their execution. CITY Attorney is responsible for assuring and certifying that the AUTHORIZED PROJECT undertaken by CITY's contracting party complies with all applicable regulations and statutes, as amended, listed in Attachment C, the Delegate Agency Construction Contract, Section IV.

6. MODIFICATION OF AUTHORIZED PROJECTS

All modifications to AUTHORIZED PROJECT must be pre-approved by COUNTY in order to be considered a part of AUTHORIZED PROJECT and eligible for reimbursement by COUNTY. CITY may request modification(s) to CDBG funding levels authorized by Attachment A or the pertinent Project Description (i.e., Scope of Activity) authorized by Attachment B. Upon receipt of a written request from CITY, and approval by COUNTY, COUNTY will revise Attachments A and B.

7. CONSOLIDATED PLAN AMENDMENT

Requests by CITY to add, delete or substantially modify an activity listed in CONSOLIDATED PLAN must be made in writing to COUNTY. Requests to add new activity(ies) must be accompanied by a CDBG project proposal application.

Substantial modifications are defined as follows: 1) an increase in funding for a CDBG public service-type activity in an amount greater than $100,000 over the current funded amount; or 2) an increase in the funding for other activities (public facility improvements, code enforcement, acquisition, etc.) in an amount greater than $500,000 over the current funded amount; or 3) a new activity not previously listed and described in the CONSOLIDATED PLAN/Annual Action Plan; or 4) a change in the type of activity; or 5) a change in the location of the activity; or 6) a change in the beneficiaries of the activity.

Requests for additions and substantial modifications will be reviewed by COUNTY for eligibility and compatibility with CONSOLIDATED PLAN. Additions, deletions and substantial modifications must be approved by CITY Council action and supportive documentation for said action must be sent to COUNTY. CITY shall comply with the requirements of and participate in the implementation of the citizen participation portion of CONSOLIDATED PLAN.

8. COUNTY RESPONSIBILITIES

COUNTY, through CDH, is empowered to enforce all federal regulations pertaining to CDBG-funded projects undertaken by CITY under Cooperation Agreement. CITY recognizes that COUNTY, as the formal grantee of the CDBG, has full responsibility and obligations to HUD for undertaking the CDBG Program and has full authority in administering and allocating funds. CITY will have no direct responsibilities or obligations to HUD, except as identified, under Cooperation Agreement. COUNTY will provide technical assistance to CITY in a timely and expeditious manner upon written request to CDH Administrator.

9. CONFORMANCE TO COUNTY PROCEDURES

Under this DA AGREEMENT, CITY elects to be responsible for implementing CDBG-funded projects. However, in implementing said projects, CITY must perform all services and activities in accordance with federal and state statutory requirements and with the policies and procedures established by the COUNTY Board of Supervisors, and shall comply with the following:

A. COMMUNITY DEVELOPMENT ADMINISTRATOR

Upon COUNTY and CITY's mutual assent to this DA AGREEMENT, CITY will designate a "Community Development Administrator" and submit to CDH written notification from CITY. The Community Development Administrator is the responsible authority for all correspondence with COUNTY, and is the signatory on AUTHORIZED PROJECT Attachments A and B and shall advise the CITY Council, CITY administration and CITY staff, as appropriate, regarding the CDBG program. CITY may, by written notification as set forth below, change the Community Development Administrator.

B. FISCAL CONTACT PERSON

For purposes of this DA AGREEMENT, CITY shall also designate a fiscal contact through written notification to CDH. The fiscal contact person shall be responsible for billing and fiscal procedures regarding the CDBG program and will serve as the primary contact for technical fiscal matters. CITY may, by written notification as set forth below, change the fiscal contact person.

CITY shall be responsible for maintaining complete and separate fiscal accounts for CDBG funds which come under its control in such manner as to permit the reports required by COUNTY to be prepared therefrom and to permit the tracing of CDBG funds to their final expenditure. CITY will submit to CDH complete and detailed project descriptions, budgets, and expenses for each project that CITY implements with CDBG funds along with monthly reports of grant expenditures.

10. MAINTENANCE AND OPERATION OF FACILITIES

CITY shall provide maintenance and operation for the life of any and all facilities constructed with CDBG funds under Cooperation Agreement that are CITY owned or operated, for the life of the facility, not less than 10 years. This Section shall survive the termination of this DA AGREEMENT and/ or Cooperation Agreement.

11. FUNDING LIMITS

CDBG funding of AUTHORIZED PROJECTS is limited to the amount allocated to CITY as listed in the Attachment A (Request to Initiate Project or Activity).

12. DISBURSEMENT OF FUNDS

All CDBG funds allocated to CITY'S AUTHORIZED PROJECT(S) shall be received from the federal government by COUNTY under ACT. CDH will disburse the funds to CITY on a cost reimbursement basis. Billing shall be accompanied by all pertinent source documentation to be presented to CDH by CITY on or about the first day of each month, allowing 30 days for payment on the part of CDH. COUNTY shall be entitled to retain from such funds such amount as is calculated as the direct costs (including, but not limited to, salaries, benefits, mileage, actual cost of materials, meals and other authorized expenses incurred by COUNTY in implementing CITY's AUTHORIZED PROJECTS, in accordance with applicable federal regulations, including 2 CFR Part 200, and San Bernardino County policies and procedures

governing travel and reimbursement.

13. WITHHOLDING OF FUNDS

COUNTY shall retain the right to withhold funds for any programs carried out by CITY, CITY's Contractor, or CITY's subcontractor upon giving written notice to CITY indicating that COUNTY has determined that CITY has not performed its obligations as stated in this Delegate Agency Agreement and or Cooperation AGREEMENT in a satisfactory or timely manner consistent with federal regulations or policy. COUNTY shall notify CITY in writing of this determination, specifying the objection(s) to CITY's performance. CITY shall then have a maximum of ten (10) days in which to remedy said deficiencies. Should said deficiencies not be remedied within the above mentioned ten (10) day period, COUNTY shall have full authority to reallocate CITY's CDBG program funding to any other eligible activity(ies), which can be implemented or to assume sole responsibility for carrying out any and/or all AUTHORIZED PROJECTS, upon written notice to CITY. Upon such notice, CITY agrees to cease all activity provided hereunder, as specified in said notice.

14. PROGRAM INCOME

Program income represents net income directly generated from the use of CDBG funds by CITY as a result of the activity funded under the terms of DA AGREEMENT. When such income is generated by an activity only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used. CITY shall return program income to COUNTY even if it is received after this DA AGREEMENT has expired. COUNTY shall have full authority to reallocate program income funding to any other eligible activity(ies), which can be implemented in a satisfactory or timely manner consistent with federal regulations or policy. Program income shall be returned to COUNTY within 30 days after: a) disposition or sale of real or personal property occurs or; b) cumulative program income reaches increments of $1,000; or c) the end of each program year. CITY shall include in the reports required by Section 15, PROGRAM REPORTING AND RETENTION OF RECORDS, all sources and amounts of program income on a monthly and year-to-date basis.

Program income returned by COUNTY to CITY will be spent by CITY on only those costs authorized under this DA AGREEMENT. All provisions of DA AGREEMENT shall apply to said use of program income funds. CITY shall account for the receipt and use of program income in such a way that program income is spent on AUTHORIZED PROJECTS before additional CDBG funds are spent.

Any program income on-hand when this DA AGREEEMENT expires or received after such expiration will be paid to COUNTY within thirty (30) days.

15. PROGRAM REPORTING AND RETENTION OF RECORDS

CITY agrees to prepare and submit financial, program progress, and other reports as required by HUD or COUNTY directives. CITY shall maintain such program, property, personnel, financial, statistical, and other records, supporting documents, and accounts as are considered necessary by HUD or COUNTY to assure proper accounting for all DA AGREEMENT funds.

Said records, documents, and accounts shall be retained by CITY for a minimum of three (3) years, unless a longer period is required by COUNTY policy. The retention period shall begin from the date the COUNTY submits its annual performance and evaluation report, as prescribed in 24 CFR 91.520, in which the activities under this DA AGREEMENT are reported for the final time. Said COUNTY submission will follow CITY's final submission of required reports to COUNTY.

Records and accounts subject to litigation, audit, or monitoring findings shall be retained until all issues are resolved and final action taken, even if this extends beyond the retention period.

Records that pertain to real property and equipment shall be retained for the period required under 2 CFR Part 200 and applicable HUD regulations. The retention period for records relating to program income shall begin at the end of the COUNTY program year in which the income is earned.

All CITY records, with the exception of confidential client information, shall be made available to representatives of COUNTY and appropriate federal agencies. CITY shall submit all data necessary for COUNTY to complete required reports in accordance with HUD regulations, in the format and within the timeframes specified by the Director of CDH or designee.

All records relating to CITY's personnel, consultants, subcontractors, services, and expenditures under this DA AGREEMENT shall be maintained in accordance with generally accepted accounting principles (GAAP) and in compliance with 2 CFR Part 200. Records shall include sufficient source documentation to support all costs.

16. MONITORING

CDH Administrator or designee will conduct periodic monitoring of CITY administration of AUTHORIZED PROJECTS. Monitoring will focus on the extent to which the CONSOLIDATED PLAN has been implemented, measurable goals achieved and effectiveness of project management, and impact of AUTHORIZED PROJECTS. Authorized COUNTY and HUD representatives shall have the right of access to all activities and facilities operated by CITY under this DA AGREEMENT. Facilities include all files, records, and other documents related to the performance of this DA AGREEMENT. CITY will permit on-site inspection by COUNTY and HUD representatives, and ensure that its employees furnish such information, as in the judgment of COUNTY and HUD representatives, may be relevant to a question of compliance with contractual conditions and HUD directives, or the effectiveness, legality, and achievements of the program.

17. ACCOUNTING

CITY shall establish and maintain, on a current basis, a financial management system in accordance with GAAP and in compliance with 2 CFR Part 200. The system shall provide for accurate, current, and complete disclosure of financial results of federally funded activities.

18. AUDITS

CITY is required to arrange and pay for an independent financial and compliance audit annually for each program year during which federal funds are received under this DA AGREEMENT as required by Circular A-128 pursuant to the Single Audit Act of 1984, Public Law 98-502. The results of the single audit must be submitted to COUNTY within 30 days of completion. Within 30 days of the submittal of said audit report, CITY shall provide a written response to all conditions or findings reported in said audit report. The response must examine each condition or finding and explain a proposed resolution, including a schedule for correcting any deficiency. All condition or finding correction actions shall take place within six months after CDH's receipt of the audit report. An audit may also be conducted by federal, state or local funding source agencies as part of the COUNTY's audit responsibilities. COUNTY and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of CITY. CITY's staff will cooperate fully with authorized auditors when they conduct audits and examinations of CITY's program. If indications of misappropriation or misapplication of the funds of this DA AGREEMENT cause COUNTY to require a special audit, the cost of the audit will be encumbered and deducted from funds allocated to CITY's CDBG AUTHORIZED PROJECTS. Should COUNTY subsequently determine that the special audit was not warranted, the amount encumbered will be restored to said CDBG AUTHORIZED PROJECT allocations. Should the special audit confirm misappropriation or misapplication of funds, CITY shall reimburse COUNTY the amount of misappropriation or misapplication from non-CDBG funding sources.

19. REVERSION OF ASSETS

Upon DA AGREEMENT termination, CITY shall transfer to COUNTY all CDBG funds on-hand (including, but not limited to, program income) at the time of expiration and any accounts receivable attributable to the use of CDBG funds.

All real property acquired or improved in whole or in part with CDBG funds in excess of $25,000 under this DA AGREEMENT must continue in the use that provides the service benefits and national objectives, for which it was funded until five (5) years after expiration of this DA AGREEMENT as set forth in 24 CFR 570.503, or such longer period of time as determined by COUNTY; or it must be disposed of in a manner resulting in a reimbursement to COUNTY in the amount of the current fair market value of the property, as determined by COUNTY, less any portion thereof attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to the property. This Section 19 shall survive the termination of this DA AGREEMENT.

20. TERMINATION AND TERMINATION COSTS

This DA AGREEMENT may be terminated in whole or in part at any time by either party upon giving sixty (60) days' notice in writing to the other party if for whatever reason either party no longer desires to have

CITY implement CDBG-funded projects/programs. If the DA AGREEMENT is terminated, the DA AGREEMENT shall continue in full force until such time as described in SECTION 2 PURPOSE and SECTION 3 TERM of DA AGREEMENT. An agreement must be reached by both parties as to conditions for termination in compliance with the provisions of federal regulations at 24 CFR Part 85.44, Termination for Convenience. CDH is hereby empowered to give said notice, subject to ratification by the COUNTY Board of Supervisors.

COUNTY may immediately terminate this DA AGREEMENT upon the termination, suspension, discontinuation or substantial reduction in HUD CDBG funding for the DA AGREEMENT activity or if for any reason the timely completion of the work under this DA AGREEMENT is rendered improbable, infeasible or impossible. If CITY materially fails to comply with any term of this DA AGREEMENT, COUNTY may take one or more of the actions provided under the federal regulation at 24 CFR Part 85.43, Enforcement, which includes temporarily withholding cash, disallowing non-compliant costs, wholly or partly terminating the award, withholding future awards, and other remedies that are legally available. In such an event, CITY shall be compensated for all services rendered and all necessarily incurred costs performed in good faith in accordance with the terms of this DA AGREEMENT that have been previously reimbursed, to the date of said termination to the extent that CDBG funds are available from HUD.

21. PROJECT ACKNOWLEDGMENT

Should CITY determine that the funding sources or the names of responsible public officials be displayed on a completed building or significant project, such identification should be acknowledged on a plaque, permanently mounted in an appropriate location, made of bronze or other appropriate material, acknowledging the funding source as the "Department of Housing and Urban Development, San Bernardino County Community Development Block Grant." The current Board of Supervisors and the members of the CITY Council shall also be identified. When multiple funding sources are utilized to construct a project, all funding sources shall be identified. The listing order of multiple funding sources identified on the plaque shall be the largest dollar amount first, the second largest dollar amount second, etc.

22. CONTRACT COMPLIANCE

When possible, CITY should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered in compliance with provisions of 2 CFR § 200.321.

CITY shall comply with all applicable federal, state, and local laws, regulations, and policies relating to equal employment opportunity and nondiscrimination in employment and contracting, including, but not limited to, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and applicable HUD requirements.

To the extent required by applicable federal law and funding requirements, CITY shall comply with Executive Order requirements related to equal employment opportunity, as may be amended, superseded, or replaced from time to time.

In addition, CITY shall make every effort to employ residents of the area and shall keep a report of CITY staff positions that have been funded directly by, or as a result of this program.

23. CONFIDENTIALITY

CITY shall protect from unauthorized use or disclosure the names and other identifying information concerning persons receiving services pursuant to this DA AGREEMENT, except for statistical information not identifying any participant. CITY shall not use or disclose any identifying information for any purpose other than carrying out the CITY's obligations under this DA AGREEMENT, except as may otherwise be required by law. This provision will remain in force even after the termination of the DA AGREEMENT.

24. DISCRIMINATION

During the term of the DA AGREEMENT, CITY shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status.

CITY shall comply with all applicable federal, state, and local laws, regulations, and policies relating to

nondiscrimination, equal employment opportunity, and contracting, including, but not limited to, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and applicable HUD requirements, as such laws and regulations may be amended, superseded, or replaced from time to time.

25. ENVIRONMENTAL REQUIREMENTS

In accordance with County Policy 11-08, the COUNTY prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The COUNTY requires CITY to use recycled paper for any printed or photocopied material created as a result of this DA AGREEMENT. CITY is also required to use both sides of paper sheets for reports submitted to the COUNTY whenever practicable.

To assist the COUNTY in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), CITY must be able to annually report the COUNTY's environmentally preferable purchases. CITY must also be able to report on environmentally preferable goods and materials used in the provision of their service to the COUNTY, utilizing a COUNTY-approved form.

26. IMPROPER INFLUENCE

CITY shall make all reasonable efforts to ensure that no COUNTY officer or employee, whose position in the COUNTY enables him/her to influence any award of the DA AGREEMENT or any competing offer, shall have any direct or indirect financial interest resulting from the award of the DA AGREEMENT or shall have any relationship to the CITY or officer or employee of the CITY.

27. IMPROPER CONSIDERATION

CITY shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the COUNTY in an attempt to secure favorable treatment regarding this Contract.

COUNTY, by written notice, may immediately terminate this DA AGREEMENT if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the COUNTY with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

CITY shall immediately report any attempt by a COUNTY officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from CITY. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, COUNTY is entitled to pursue any available legal remedies.

28. STANDARDS OF CONDUCT

Pursuant to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and 24 CFR 570.611 (Conflict of Interest), CITY shall maintain a written code or standards of conduct governing 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 CITY shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when:

A. The employee, officer or agent;
B. Any member of his immediate family;
C. His or her partner; or
D. An organization, which employs, or is about to employ, any of the above, has financial or other interest in the firm selected for award.

CITY officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-Agreements.

CITY may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by state or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by CITY's officers, employees, or agents, or by contractors or their agents.

29. FORMER COUNTY OFFICIALS

CITY agrees to provide or has already provided information on former County Administrative Officials (as defined below) who are employed by or represent CITY. The information required includes a list of former County Administrative Officials, who terminated COUNTY employment within the last five (5) years and are now officers, or employees of CITY. The information includes the employment with or representation of CITY. For purposes of this provision, "County Administrative Official" is defined as a member of the Board of Supervisors or such Officer's staff, Chief Executive Officer or member of such Officer's staff, Department or Group Head, Assistant Department or Group Head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

30. RELIGIOUS PROSELYTIZING OR POLITICAL ACTIVITIES

CITY agrees that it will not perform or permit any religious proselytizing or political activities in connection with the performance of this DA AGREEMENT. Funds under this DA AGREEMENT will be used exclusively for performance of the work required under this DA AGREEMENT and no funds made available under this AGREEMENT shall be used to promote any religious or political activities.

31. INDEMNIFICATION

CITY agrees to indemnify, defend and hold harmless COUNTY and its respective authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this DA AGREEMENT, resulting from the negligent acts, errors or omissions of the CITY, its authorized officers, employees, agents or volunteers, including, but not limited to, such liability, claims, losses, demands, and actions incurred by COUNTY as a result of the determination by HUD or its successor that activities undertaken by CITY under the program(s) fail to comply with any laws, regulations or policies applicable thereto or that any funds billed by and disbursed to CITY under this DA AGREEMENT were improperly expended.

COUNTY agrees to indemnify, defend and hold harmless CITY, its officers, agents, volunteers, and employees, from any and all claims, actual losses, damages and or liability that may result from the negligent acts, errors or omissions of the COUNTY, its authorized officers, employees, agents, or volunteers arising out of this DA AGREEMENT.

If the Parties are determined to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under this DA AGREEMENT, each Party shall indemnify the others to the extent of its comparative fault as determined in a legal action.

This SECTION 31 INDEMNICATION shall survive the termination of this DA AGREEMENT.

32. INFORMAL DISPUTE RESOLUTION

In the event the COUNTY determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this DA AGREEMENT or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

33. LEGALITY AND SEVERABILITY

The parties' actions under the DA AGREEMENT shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this DA AGREEMENT are specifically made severable. If a provision of the DA AGREEMENT is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

34. LICENSES,PERMITS AND/OR CERTFICIATIONS

CITY shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of federal, state, county, and municipal laws, ordinances, rules and regulations. CITY shall maintain these licenses, permits and/or certifications in effect for the duration of this DA AGREEMENT. CITY will notify COUNTY immediately of loss or suspension of any such licenses, permits and/or certifications. Failure

to maintain a required license, permit and/or certification may result in immediate termination of this DA AGREEMENT.

35. MATERIAL MISSTATEMENT/MISREPRESENTATION

If during the course of the administration of this DA AGREEMENT, the COUNTY determines that CITY has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this DA AGREEMENT may be immediately terminated. If this DA AGREEMENT is terminated according to this provision, the COUNTY is entitled to pursue any available legal remedies.

36. MUTUAL COVENANTS

The parties to this DA AGREEMENT mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

37. NONDISCLOSURE

CITY shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the COUNTY to CITY or an agent of CITY or otherwise made available to CITY or CITY's agent in connection with this DA AGREEMENT; or, (2) acquired, obtained, or learned by CITY or an agent of CITY in the performance of this DA AGREEMENT. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

38. NOTICE OF DELAYS

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this DA AGREEMENT, that party shall, within five (5) business days, give notice thereof, including all relevant information with respect thereto, to the other party.

39. SELF-INSURANCE

CITY and the COUNTY are authorized self-insured public entities for purposes of general liability, automobile liability, professional liability and workers' compensation. CITY and COUNTY warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against any liabilities arising out of their performance regarding the terms and conditions of this DA AGREEMENT.

40. OWNERSHIP OF DOCUMENTS

All documents, data, products, graphics, computer programs and reports prepared by CITY pursuant to the DA AGREEMENT shall be considered property of the COUNTY upon payment for services (and products, if applicable). All such items shall be delivered to COUNTY at the completion of work under the DA AGREEMENT. Unless otherwise directed by COUNTY, CITY may retain copies of such items.

41. AMENDMENTS: VARIATIONS

This writing, with attachments, embodies the whole of this DA AGREEMENT of the parties hereto. There are no oral agreements contained herein. Except as herein provided, additions or variations of the terms of this DA AGREEMENT shall not be valid unless made in the form of a written amendment to this DA AGREEMENT formally approved and executed by both parties.

42. AIR, WATER POLLUTION CONTROL, SAFETY AND HEALTH

CITY shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this DA AGREEMENT.

43. RELATIONSHIP OF THE PARTIES

Nothing contained in this DA AGREEMENT shall be construed as creating a joint venture, partnership, or employment arrangement between the parties hereto, nor shall either party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other party hereto.

44. RELEASE OF INFORMATION

No news releases, advertisements, public announcements or photographs arising out of the DA AGREEMENT or CITY's relationship with COUNTY may be made or used without prior written approval of the COUNTY.

45. REPRESENTATION OF THE COUNTY

In the performance of this DA AGREEMENT, CITY, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the COUNTY.

46. STRICT PERFORMANCE

Failure by a party to insist upon the strict performance of any of the provisions of this DA AGREEMENT by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this DA AGREEMENT thereafter.

47. SUBCONTRACTING

CITY shall obtain COUNTY's written consent, which COUNTY may withhold in its sole discretion, before entering into agreements with or otherwise engaging any subcontractors who may supply any part of the Services to this Agreement. At COUNTY's request, CITY shall provide information regarding the subcontractor's qualifications and a listing of the subcontractor's key personnel including, if requested by the COUNTY, resumes of proposed subcontractor personnel. CITY shall remain directly responsible to COUNTY for its subcontractors and shall indemnify COUNTY for the actions or omissions of its subcontractors under the terms and conditions specified in Section 31 INDEMNIFICATION. All approved subcontractors shall be subject to the provisions of this DA AGREEMENT applicable to Contractor Personnel.

A. For any subcontractor, CITY shall:
   a. Be responsible for subcontractor compliance with the DA AGREEMENT and the subcontract terms and conditions; and
   b. Ensure that the subcontractor follows COUNTY's reporting formats and procedures as specified by COUNTY.

Upon expiration or termination of this DA AGREEMENT, COUNTY will have the right to enter into direct agreements with any of the subcontractors. CITY agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractors from entering into direct agreements with COUNTY.

48. SUBPOENA

In the event that a subpoena or other legal process commenced by a third party in any way concerning the goods or services provided under this DA AGREEMENT is served upon CITY or COUNTY, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. CITY and COUNTY further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by CITY for COUNTY.

49. TIME IS OF THE ESSENCE

Time is of the essence in performance of this DA AGREEMENT and of each of its provisions.

50. VENUE

The parties acknowledge and agree that this DA AGREEMENT was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this DA AGREEMENT will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this DA AGREEMENT is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

51. CONFLICT OF INTEREST

CITY shall make all reasonable efforts to ensure that no conflict of interest exists between its officers,

employees, or subcontractors and the COUNTY. CITY shall make a reasonable effort to prevent employees, contractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others, such as those with whom they have family business or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the COUNTY determines a conflict of interest situation exists, any increase in costs associated with the conflict of interest situation may be disallowed by the COUNTY, and such conflict may constitute grounds for termination of the DA AGREEMENT. This provision shall not be construed to prohibit employment of persons with whom CITY's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

52. DISCLOSURE OF CRIMINAL AND CIVIL PROCEDURES

COUNTY reserves the right to request the information described herein from the CITY. Failure to provide the information may result in a termination of the DA AGREEMENT. COUNTY also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. CITY also may be requested to provide information to clarify initial responses. Negative information discovered may result in DA AGREEMENT termination.

CITY is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten (10) years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten (10) years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the CITY will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, CITY is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the CITY will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the COUNTY. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

53. FISCAL PROVISIONS

CITY shall accept all payments from COUNTY via electronic funds transfer (EFT) directly deposited into the CITY's designated checking or other bank account. CITY shall promptly comply with directions and accurately complete forms provided by COUNTY required to process EFT payments.

COUNTY is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. COUNTY shall only pay for any state or local sales or use taxes on the services rendered or equipment and/or parts supplied to the COUNTY pursuant to the DA AGREEMENT.

CITY shall adhere to the COUNTY's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this DA AGREEMENT and for which reimbursement is sought from the COUNTY. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

54. CORRECTION OF PERFORMANCE

Failure by CITY to comply with any of the provisions, covenants, requirements or conditions of this DA AGREEMENT shall be a material breach of this DA AGREEMENT.

In the event of a non-cured breach, COUNTY may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this DA AGREEMENT:

A. Afford CITY thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of COUNTY; and/or
B. Discontinue reimbursement to CITY for and during the period in which CITY is in breach, which reimbursement shall not be entitled to later recovery; and/or
C. Withhold funds pending duration of the breach; and/or
D. Offset against any monies billed by CITY but yet unpaid by COUNTY those monies disallowed pursuant to Item “b” of this paragraph; and/or
E. Terminate this DA AGREEMENT immediately and be relieved of the payment of any consideration to CITY. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. The cost to the COUNTY shall be deducted from any sum due to the CITY under this DA AGREEMENT and the balance, if any, shall be paid by the CITY upon demand.

55. ENTIRE AGREEMENT

This DA AGREEMENT, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this DA AGREEMENT not expressly set forth herein are of no force or effect. This DA AGREEMENT is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this DA AGREEMENT and signs the same of its own free will.

56. ELECTRONIC SIGNATURES

This DA AGREEMENT may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this DA AGREEMENT (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed DA AGREEMENT upon request.

IN WITNESS WHEREOF, the COUNTY and the CITY have each caused this DA AGREEMENT to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

►

Luther Snoke, Chief Executive Officer

Dated:

CITY OF CHINO

By: ►

(Authorized signature - sign in blue ink)

Name: Linda Reich

Title: City Manager

(Print or Type)

Dated:

Address: P.O. Box 667
Chino, CA 91708-0667

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
►	►	►
Suzanne Bryant, Deputy County Counsel		Robert Gilliam, Acting Director
Date	Date	Date

ATTACHMENT A - REQUEST TO INITIATE PROJECT/ACTIVITY

PROJECT/CASE NUMBER: DATE OF ORIGINAL ISSUE:

CFDA No.: 14.218 ORIGINAL: REVISION No.:

TARGET AREA: DATE OF REVISION:

Pursuant to the terms of the Delegate Agency Agreement between Department of Community Development and Housing (CDH), and the City of Chino, effective July 1, 2027, CDH hereby requests that the following project/activity be initiated. There will be no changes in Project/Activity Title, Activity Budget (Attachment A) or in the Activity Description (Attachment B) without written approval of CDH Director.

PROJECT/ACTIVITY TITLE:

ACTIVITY LOCATION:

TOTAL PROJECT FUNDING: $_____

CITY CDBG ALLOCATION RELEASED: $_____

CITY CDBG FUNDS EXPENDED AS OF _____: $_____

DATE OF RELEASE OF FUNDS:

BALANCE OF FUNDS AVAILABLE: $_____

SCHEDULE OF CITY CDBG ALLOCATION:

Year 52	Year 53	Year 54	Year 55	Year 56	Year 57	Year 58	
# _____	# _____	# _____	# _____	# _____	# _____	# _____	TOTAL OF
(75-2027)	(2027-28)	(2028-29)	(2029-30)	(2030-31)	(2031-32)	(2032-33)	58 YEARS
$ N/A	$	$	$	$	$	$	$

MAINTENANCE AND OPERATION BUDGET/AGREEMENT:

OTHER PERTINENT INFORMATION:

ACCEPTANCE OF REQUEST TO INITIATE PROJECT/ACTIVITY

I hereby acknowledge the receipt of the Request to Initiate the above Project/Activity and agree to implement the activity described in Attachment B (Project/Activity Description) in accordance with the above Allocation and Balance of Funds Available subject to necessary approvals of the Board of Supervisors. The proposed budget for this project is as follows:

LAND ACQUISITION:	$_____	PURCHASE OF EQUIPMENT:	$_____
STAFF COST RELATED TO LAND ACQUISITION:	$_____	CONSTRUCTION COST:	$_____
		CITY STAFF COST:	$_____
DESIGN:	$_____	CONTINGENCY:	$_____
CONSULTANT SERVICES:	$_____		

TOTAL CITY CDBG ALLOCATION AVAILABLE: $_____

IMPLEMENTING CITY:_____ DATE:_____

SIGNATURE:_____ TITLE:_____

SAN BERNARDINO COUNTY

_____ DATE:_____

CDH Director

ATTACHMENT B - PROJECT/ACTIVITY DESCRIPTION

PROJECT/CASE NUMBER:

DATE OF ORIGINAL ISSUE:

CFDA No.: 14.218

ORIGINAL: REVISION No.:

TARGET AREA:

DATE OF REVISION:

PROJECT/ACTIVITY TITLE:

ACTIVITY LOCATION:

ACTIVITY DESCRIPTION:

IMPLEMENTING CITY:_____ DATE:_____

SIGNATURE:_____ TITLE:_____

SAN BERNARDINO COUNTY

_____ DATE:_____

CDH Director

Attachment C
SAN BERNARDINO COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT AND HOUSING
DELEGATE AGENCY
COORDINATION PROCEDURES

I. Introduction

The following procedures identify the actions, responsibilities, and sequence of events for Community Development Block Grant, hereinafter referred to as “CDBG”, funded projects being implemented by a coordinated effort between the San Bernardino County Department of Community Development and Housing, hereinafter referred to as "CDH," and the Delegate Agency (City), hereinafter referred to as "DA". For each action or event listed in Section III of this attachment, the entity responsible for carrying out that action or event is referenced beside it. Section IV contains regulations and statutes applicable to CDBG funded activities.

II. Authorization to Proceed

The DA is not authorized to expend funds or to initiate CDBG projects until authorized to do so in writing by CDH. Contract procurement shall be governed by all Federal regulations and statutes, as amended, listed in Section IV of the Attachment. CDH payments of DA Requests for Reimbursement will be subject to DA submittal of a complete reimbursement report package as listed in Section III, D-20.

A. Project/Activity Budget

Each project activity is initiated by an Attachment "A". The Attachment "A" is released when the project/activity is ready to be implemented and subsequent to environmental clearance and release of funds from HUD. It specifies the total funding allocation for the project/activity, the portions currently released and available to expend, the budget categories, the allocation will be expended under, and the entity responsible for maintenance and operation of the completed project.

In accepting the Attachment "A" the DA is to complete an estimated budget showing the allocation distribution to design costs, staff costs, construction costs, etc. This breakdown may also include a contingency or inflation factor not to exceed 10% of the total activity allocation.

Approval to change the project/activity budget/funds available will come from CDH in the form of a revised Attachment "A" (and corresponding Attachment "B", if appropriate).

B. Activity Description

The activity description is forwarded to the DA as Attachment "B". The preparation of the project description, both preliminary and final, is the responsibility of the CDH Community Development Division.

The description should be specific enough for use as the scope of work funded by CDBG money in a Request for Proposal (RFP) for architectural or engineering services or for a vendor in preparing a bid. It will contain, but is not limited to, the following:

1. Title of Project/Activity
2. Activity Number
3. Specific site description
4. On- and off-site improvement description

5. Size of building
6. Fixtures list (such as stove, built-in equipment)
7. Water and sewer requirements
8. Utilities
9. Specific zoning and planning requirements
10. Specific uses of the site and/or building
11. Equipment
12. Functions

Approval to change the project/activity description will come from CDH in the form of a revised Attachment "B" (and corresponding Attachment "A", if appropriate).

CDH will complete the Attachments "A" and "B" and will send two copies each to DA for signature. Once signed and fully completed, they must be returned to CDH for signature. An original of each will be returned to DA signifying authorization to proceed with actions outlined in the following sections:

III. Actions and Responsibilities

A. Property Acquisition

The DA can pursue the acquisition of real property (and related relocation requirements, if necessary) through its jurisdiction or request the County's Real Estate Services Department, hereinafter referred to as "RES", to handle the acquisition and/or relocation. If relocation is required, initiate a 90-day notice to occupant(s).

1. If DA wishes to purchase the property, the following procedures should be followed:

   a. DA: Refers to HUD Handbook 1378 which implements the Uniform Relocation Assistance and Real Property Acquisition regulations including the Federal Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Braithwaite Act of the State of California and any subsequent amendments to these acts and regulations. If relocation is required, the appropriate notices will be issued in accordance with the "Timely Notices" (49 CFR 24.203) provision of the Relocation Handbook 1378.

   b. DA: Obtains required appraisals.

   c. DA: Reviews required appraisals and/or leases to determine if property can be acquired within the project allocation.

   d. DA: Sends all lease documents to CDH for approval.

   e. DA: Sends any requests for adjustments of funds for property acquisition and/or relocation to CDH for approval.

   f. CDH: Issues approvals in relation to "d" above and sends them to DA.

   g. DA: Initiates lease or purchase.

   h. DA: Sends Request for Advance of Funds to CDH, 20 working days prior to expected close of escrow, with all appropriate documentation attached.

2. If DA desires to have RES handle acquisition and/or relocation activities, the DA should follow this procedure:

   a. DA: Submits a letter to CDH requesting that RES handle the project/activity describing in detail what property is to be acquired, giving all pertinent information, and identifying who the DA contact person is to be. If relocation is required, initiate a 90-day notice to occupant(s).

   b. CDH: Initiates appraisal process.

   c. RES: Obtains required appraisals.

   d. RES: Forwards appraisals to DA.

   e. DA: Reviews appraisals and/or leases to determine if property should be acquired and/or leased. Prepares and forwards request to CDH.

   f. CDH: Reviews request from DA, and forwards Authorization to Proceed to RES (Note: all leases and all adjustments in project allocations must be requested and approved by CDH).

   g. RES: Initiates purchase or lease of property. If relocation is required, the appropriate notices will be issued in accordance with the "Timely Notices" (49 CFR 24.203) provision of the Relocation Handbook 1378.

RES will work with the designated DA contact person throughout the acquisition/relocation process to assure that the DA is aware of the activities and can make any necessary decisions in relation to the activity.

B. Architect and/or Engineer Selection

1. The usual procedure for the selection of an architect or engineer involves a Request for Proposal (RFP) for professional services, following this process:

   a. DA: Prepares an RFP for architectural and engineering or other consultant services.

   b. DA: Submits draft RFP to CDH for review for contract compliance and consistency with Federal Title 24 CFR, Part 85 Section 85.36, (Procurement Standards).

   c. DA: Incorporates CDH revisions, if any, into RFP and reviews RFPs for compliance with State, Federal, Local and CDH regulations. Requests CDH "Approval to Proceed" to Issue "RFP".

   d. CDH: Issues to DA an "Approval to Proceed" to issue an "RFP".

   e. DA: Advertises RFP, receives responses, interviews, requests CDH representation on selection committee and makes selection.

   f. DA: Notifies CDH of selection. Sends back-up documentation and draft contract to CDH. Submits to CDH a "Request for Approval to Proceed" to award a "Consultant Services Contract".

   g. CDH: Reviews final contract for compliance and issues an "Approval to Proceed" to

award a “Consultant Services Contract".

h. DA: Awards Consultant Services Contract.

2. Architectural and engineering services may also be negotiated under certain situations; i.e., obtained through a sole source procurement. This is an eligible alternative requiring the following steps:

a. DA: Determines that the situation warrants noncompetitive procurement (sole source) and that such procurement will comply with applicable federal requirements, including 2 CFR Part 200, specifically 2 CFR §200.320(c) (noncompetitive procurement), and all applicable HUD requirements.

b. DA: Selects architect, engineer or other consultants.

c. DA: Submits to CDH a “Request for Approval to Proceed” to award a “Sole Source Consultant Services Contract" to CDH explaining why the DA has chosen the consultant and why the competitive RFP procedure is not being used.

d. CDH: Reviews the request and approves or denies sole source procurement request based on explanation and backup.

e. CDH: Issues "Approval to Proceed” to award a “Sole Source Consultant Services Contract" authorization or denial of request.

f. DA: Negotiates and awards the sole source contract.

C. Design Phase

1. DA: Monitors preparation of preliminary plans by architect.

2. DA: Notifies CDH of all public meetings with architect, five working days before event.

3. CDH/ DA: Reviews and approves preliminary design.

4. DA: Secures all required permits and regulatory approvals.

5. DA: Secures plans, check of plans and specifications from the appropriate Building and Safety Authority.

D. Construction Phase

1. DA: Reviews and approves plans and specifications, and obtains current Federal Wage Decision from CDH or online at https://sam.gov/search?index=wd&date_filter_index=0&date_rad_selection=date&wdType=dbra&state=CA&county=16328&page=1, to be included in bid package.

2. DA: Forwards construction bid package and approved plans to CDH for review and approval along with a “Request for Approval to Proceed” to issue an “Invitation to Bid” for construction services. Attachment “D” - "Construction Contract Labor Compliance Provisions" must be part of the complete bid package submitted to CDH for approval.

3. CDH: Reviews and approves construction bid package for compliance with Federal and local regulations and forwards “Approval to Proceed” to invite bids with changes (if any) to DA.

4. DA: Determines that the bid solicitation process is permitted in accordance with applicable CDBG requirements and federal procurement standards, including 2 CFR Part 200 (specifically 2 CFR §200.320), and County contracting regulations. CITY shall advertise an “Invitation to Bid” and receive bids in accordance with such requirements.

5. DA: Ten days prior to bid opening, DA makes contact with CDH or obtainsonline at https://sam.gov/search?index=wd&date_filter_index=0&date_rad_selection=date&wdType=dbra &state=CA&county=16328&page=1 the current Federal Wage Decision. If the Federal Wage Decision is in any way different from that issued in the original bid package, DA will issue a bid addendum and immediately forward the latest wage decision to all bidding contractors who, in turn, submit revised bids prior to the bid opening. DA shall notify CDH of any change in the Federal Wage Decision should DA use the online option above.

6. DA: Conducts bid opening and reviews bid documents submitted by the low bidder to assure compliance with County Policy 15-01, if applicable, and applicable federal requirements regarding the participation of minority, women-owned, and labor surplus area firms, including 2 CFR Part 200 (specifically 2 CFR §200.321), in the proposed construction contract. If DA has its own plan that meets such requirements, it may use this plan for bid document reviews.

   During the term of the DA AGREEMENT, CITY shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status.

   CITY shall comply with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination, equal employment opportunity, and contracting, including, but not limited to, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and applicable U.S. Department of Housing and Urban Development (HUD) requirements, as such laws, regulations, and federal directives may be amended, superseded, or replaced and as in effect at the time of contract performance.

7. DA: Submits the low-bidder information and list of subcontractors to CDH and a “Request for Approval to Proceed” to award a “Construction Services Contract". If adjustment of funds or project description is needed, the written request for reallocation of funds (revised Attachment "A") or change in project description (revised Attachment "B") should be sent at this time.

8. CDH: Prepares revisions to Attachment "A" and/or "B" as requested (if necessary).

9. CDH: Reviews Contractor/Subcontractor's eligibility to receive Federal contracts.

10. CDH: Issues "Approval to Proceed" to award a “Construction Services Contract” to DA.

11. DA: Insures completeness of contract documents prior to award of contract. **Prime and Sub-Contractor Construction contracts must contain the Labor Compliance Contract Addendum (LCCA)**, applicable Federal Wage Determination, and a copy of restrictions on public buildings and public works projects provisions.

12. DA: Awards Contract.

13. DA: Notifies CDH of pre-construction conference at least five (5) working days prior to event. **Prime and Sub-Contractor’s labor compliance personnel must attend pre-construction conference.** Submits required CDH documents (Ex: completed bid package) prior to pre-construction meetings, including Contractor Information Sheet.

14. DA: Conducts pre-construction conference (CDH attendance mandatory). CDH sets up prime contractor on LCPtracker.

15. DA/ CDH: DA provides CDH with a copy of signed contract which incorporates the LCCA prior to start of construction. DA ensures completion of bonds and all required labor compliance documentation is accepted in LCPtracker. CDH obtains Project Wage Rate Sheet from Prime Contractor which includes all federal labor classifications that will be utilized on the project by the Prime Contractor as well as ALL Sub-Contractors.

16. DA: Keeps an up-to-date record of all encumbrances and obligations, including staff costs incurred, to assure that the remaining balance of funds is known.

17. CDH/ DA: Ongoing observation and monitoring of projects.

18. DA: Conducts on-site interviews with contractor employees for each trade regarding their wages. Sends original signed Record of Employee Interview (HUD-11) to CDH. CDH may require Record of Employee Interview to be entered on LCPtracker.

19. DA: Ensures contractor’s submission of Weekly Certified Payroll in LCPtracker.

20. DA: Receives Contractor requests for progress payments and any other documentation of expenditures and work accomplished. DA reviews labor compliance reports in LCPtracker.

21. CDH: Reviews Contractor Weekly Certified Payroll on LCPtracker during the term of construction, including non-performance payrolls.

22. CDH: Checks wages reported on Certified Payroll forms against employee interview forms for consistency between wage rates reported by contractor and wages received by employees.

23. DA: Submits to CDH during the term of the construction contract, a report package

containing:

- Request for Reimbursement and accompanying documentation. Payments on said requests are subject to complete compliance with Federal Labor Standards.

24. DA: Notifies CDH of all meetings regarding CDH projects, such as Design Conferences, Public Meetings, meetings with Community Development Advisory Commission, and DA at least five working days before event occurs.

25. DA: Processes change orders and sends copy(ies) of proposed change order(s) along with a “Request for Approval to Proceed” to issue a “Contract Change Order” to CDH. Must obtain approval from CDH regarding all change orders prior to authorizing the contractor to proceed with said changes.

26. DA: Notifies CDH of proposed changes in the list of subcontractor(s) and submits a “Request for Approval to Proceed" to add or delete subcontractor(s) from the approved list.

27. CDH: Revises Attachments "A" or "B", if necessary, and issues an "Approval to Proceed” to issue a “Change Order(s)" to DA.

28. DA: Notifies CDH of final inspections at least five working days before inspection date.

29. DA: Attends final inspections (CDH attendance optional).

30. DA: Secures its governing body's acceptance of completed project and filing of Notice of Completion and submits "Notice of Completion" to CDH.

31. CDH: Monitors project progress and contract compliance and issues, as necessary, "Notice to Submit Final Activity Costs" notices to DA.

32. DA: Takes necessary actions to comply with said notices.

33. CDH: Conducts "Annual Certification of Use of Facilities".

IV. DA must ensure compliance with the following regulations and statutes, as amended, in carrying out CDBG funded activities:

A. Community Development Block Grant Regulations of the Housing and Community Development Act of 1974, as amended (24 CFR 570).

B. Applicable Uniform Administrative Requirements:

1) 2 CFR Part 200, including all applicable subparts (Administrative Requirements, Cost Principles, and Audit Requirements), and applicable U.S. Department of Housing and Urban Development (HUD) regulations and guidance.

C. Applicable Uniform Administrative Requirements for Subrecipients that are not Governmental Entities:

D. 2 CFR Part 200, including all applicable subparts (Administrative Requirements, Cost Principles, and Audit Requirements), and applicable U.S. Department of Housing and Urban Development (HUD) regulations and guidance. Federal Labor Standards Compliance Handbook No. 1344.1 REV-3 including:

1) Davis-Bacon and Related Acts (40 USC §3141 et seq.; 29 CFR Parts 1, 3, 5, 6 and 7)
2) Contract Work Hours and Safety Standards Act (40 U.S.C. §3701-3708; 29 CFR part 5)
3) Copeland (Anti-Kickback) Act (18 U.S.C. 874; 29 CFR Part 3)

E. All applicable federal, state, and local laws, regulations, and policies relating to equal employment opportunity and nondiscrimination in employment and contracting, including, but not limited to, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and applicable U.S. HUD requirements, as such laws and regulations may be amended, superseded, or replaced and as in effect at the time of contract performance.

F. Environmental Protection Agency Regulations (40 CFR Part 1500-1508)

G. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128)

H. Archaeological and Historic Preservation Act of 1974

I. Rehabilitation Act of 1973, as amended

J. Americans with Disabilities Act of 1990, as amended

K. Clean Air Act (42 U.S.C. 7401 et. seq.)

L. Clean Water Act (33 U.S.C. 1368)

M. Section 3 Regulations of the Housing and Urban Development Act of 1968, Title 24 CFR, Part 135 (12 U.S.C. 1701u)

N. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et. seq.)

O. Fair Housing Act (42 U.S.C. 3601-20)

P. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601-4655)

Q. The Hatch Act of 1939

R. Lead Based Paint Poisoning Prevention Act 24 CFR Part 35

Attachment D

SAN BERNARDINO COUNTY

DEPARTMENT OF COMMUNITY DEVELOPMENT AND HOUSING

DELEGATE AGENCY

CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS

NOTICE TO BIDDERS

PROJECT FUNDING SUBJECT TO FEDERAL PREVAILING WAGE REQUIREMENTS

Bidders are advised that federal funds are being used for this project and that as a result, certain requirements are to be imposed, depending upon the source of the federal funds. Sources may include Community Development Block Grant (CDBG) funds, and/or HOME Investment Partnerships Program (HOME) funds. The utilization of these federal funds on a project will require the payment of federal prevailing wages under the Davis-Bacon and Related Acts ("DBRA") (40 USC §3142, 40 USC §§ 276a-276a-7, 29 CFR Part 5), which will be enforced when the contract amount for the Prime Contract exceeds $2,000. The Prime Contractor is responsible for ensuring all Subcontractor(s) and lower tier Subcontractor(s) comply with DBRA. Also, Federal Labor Standards Provisions (HUD-4010) apply and are attached.

A copy of the Federal Prevailing Wage Decision, the date of which reflects the latest applicable modification at the time of the bid advertisement, shall be included. Bidders shall be notified, via Addendum, of modifications, if any, which supersede that modification included herein, up until a minimum of ten days prior to the actual Bid Opening for this project. Bidder can obtain Davis-Bacon Act Wage Decision(s) at: https://sam.gov/content/home.

Equal Employment Opportunity. The bidder's attention is called to the Equal Opportunity requirements contained in the contract documents. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin, and shall comply with all applicable federal, state, and local laws and regulations relating to equal employment opportunity, including, but not limited to, Title VII of the Civil Rights Act of 1964, applicable U.S. Department of Housing and Urban Development (HUD) requirements, and all requirements as may be amended, superseded, or replaced and as in effect at the time of contract performance.

The Contractor shall take affirmative steps to ensure equal opportunity in employment, including outreach and recruitment efforts consistent with applicable federal and state requirements.

PROJECT FUNDING SUBJECT TO STATE PREVAILING WAGE REQUIREMENTS

Bidder is advised and certify by bidding on this project that bidder (including any and all sub-contractors) is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction including, but not limited to, inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the post-construction phases of construction, including, but not limited to, all cleanup work at the jobsite." If the Services/Scope of Work are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services/Scope of Work available to interested parties upon request and shall post copies at the Contractor's principal place of business and at the project site. Contractor will also adhere to any other applicable requirements, including but not limited

to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Contractor shall defend, indemnify and hold the COUNTY, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws.

Upon request by bidder a copy of the Director's General Prevailing Wage Determination(s), the date of which reflects the latest applicable modification at the time of this bid advertisement will be furnished. Bidders shall be notified, via Addendum, of modifications, if any, which supersede that wage determination. Bidder can obtain a copy of the Director's General Prevailing Wage Determination(s) at: http://www.dir.ca.gov/OPRL/dprewagedetermination.htm.

PROJECT(S) SUBJECT TO FEDERAL AND STATE PREVAILING WAGE REQUIREMENTS

When the project(s) is subject to both the State (CA) and Federal (Davis-Bacon) prevailing wage rate laws, and when federal funds trigger prevailing wage requirements as determined under the Davis Bacon Act, the higher of the two, the State prevailing wage rate and the Davis-Bacon (federal) wage rate and the most restricted prevailing wage regulation(s) will apply to each job classification, and the project(s), unless applicable law requires otherwise.

PROJECT(S) SUBJECT TO BUILD AMERICA, BUY AMERICA ACT REQUIREMENTS

Bidder is advised and certify by bidding on this project that bidder (including any and all sub-contractors) is aware of the requirements for the Buy America Preference, imposed by the Build America, Buy America Act (BABA), under Division G, Title IX of the Infrastructure Investment and Jobs Act (IIJA, PUB. L. No. 117-58 and 2 CFR 184) signed into law on November 15, 2021.

TABLE OF CONTENTS

CONSTRUCTION CONTRACT PROVISIONS - DEFINITIONS

The following are definitions of State and federal provisions/documents for federally-assisted projects.

NOTE: Please refer to the "Required Documents" table for any documents to be completed and submitted for this project. The term "Contractor" or "Contractor's" are used throughout this document and may refer to the Prime Contractor, Subcontractor and/or lower tier Subcontractor. See the "Required Documents" table for information on which Contractor(s) are required to submit each document.

Affirmative Action Compliance Guidelines for Construction or Non-Construction Contractors – Generally, affirmative action requirements apply to contracts and subcontracts in excess of $10,000. This document provides guidelines to assist all Contractors, as identified on the "Required Documents" table, meet affirmative action and Equal Employment Opportunity requirements set forth in federal regulations 41 CFR 60.

Affirmative Action Compliance Form For Construction Contracts Over $10,000 (LCF DB16-2.2) – eDocument affirming all Contractors, as identified on the "Required Documents" table, understanding and implementation of Affirmative Action Compliance requirements.

Authorization For Payroll Deduction(s) (LCF 16-1.4) – eDocument signed by any employee of the Contractor, as identified on the "Required Documents" table, who has "Other/Garnish" payroll deduction.

Bid Bond − A bid guarantee of at least 10% of the contract price is required from each bidder and must be submitted with the Bid.

Build America, Buy America Act (BABA) - Requires that all iron and steel, construction materials, and manufactured products used in federally-funded infrastructure projects are produced in the Unites States. **The Prime Contractor is responsible to include Build America, Buy America language in all executed Subcontractor/Sub-Tier contracts for the project(s).**

Business Certification – Business certification includes Disadvantaged Business Enterprise (DBE) - Disadvantaged Veteran Business Enterprise (DVBE) – Local Business Enterprise (LBE) – Minority Business Enterprise (MBE) – Small Business Enterprise (ESBE) – Women Business Enterprise (WBE).

Certificate of Owner's Attorney − This certificate is to be completed by the owner's attorney when applicable.

Certificate of Understanding and Authorization Form (LCF 16-1.2) – eDocument signed by all Contractors, as identified on the "Required Documents" table, certifying the most current "Davis-Bacon Labor Standards" has been read and understood.

Certification of Bidder Regarding Equal Employment Opportunity (LCF DB16-2.1) – eDocument certification required by all Contractors, as identified on the "Required Documents" table, by federal regulations (41 CFR 60).

Certification of Compliance with Air and Water Acts − All Contractors, as identified on the "Required Documents" table, must comply with this certification when the contract exceeds $100,000.

Checklist of Labor Law Requirements (LCF CA16-3.1) – eDocument signed by all Contractors, as identified on the "Required Documents" table, acknowledging awareness of the applicable labor law requirements.

Contractor's Certification of Compliance with Davis-Bacon and Related Acts (**LCF DB16-2.0) –** eDocument certification required by all Contractors, as identified on the "Required Documents" table, by federal law (29 CFR 5).

Davis-Bacon Act Wage Decision − The Davis-Bacon Act Wage Decision contains the wage rates for construction projects within San Bernardino County. A copy of the Davis-Bacon Act Wage Decision is

included in the bid package and can also be found at https://www.sam.gov/portal/public/SAM/. The wage decision that applies to the project is the one in effect ten days prior to the bid opening date.

eDocuments – Labor compliance documents required to be submitted by all Contractors, as identified on the "Required Documents" table, electronically prior to Certified Payroll submission. Each eDocument is listed by name in the definitions herein.

Equal Employment Opportunity Clauses/Equal Employment Opportunity Construction Contract Provisions − These provisions are to be inserted in all applicable federally assisted contracts and subcontracts.

E-signature Authorization (LCF 16-1.0) – eDocument signed by an owner, partner, executive officer, and all duly authorized "Designee" employee(s) of all Contractors, as identified on the "Required Documents" table, who have authority to enter into agreements on behalf of Contractor and who will be uploading eDocuments and/or certified payroll records (CPR)s into LCPtracker. This document must be notarized with an "Acknowledgment" form and will be valid for a period of one (1) calendar year from the signature date.

Federal Labor Standards Provisions (HUD-4010 form) − These provisions set forth the federal labor requirements for Contractors working on federally assisted construction projects in which the prime contract exceeds $2,000. Contractors are required to pay their laborers and mechanics working onsite a wage as specified in the FEDERALLY FUNDED PROJECTS section of this provision. ***The Prime Contractor is responsible to include the Labor Compliance Contract Addendum in all executed Subcontractor/Sub-Tier contracts for the project(s).***

Fringe Benefit Statement (LCF 16-1.3) – eDocument signed by all Contractors, as identified on the "Required Documents" table, identifying bona fide Fringe Benefits in which their employees are participating.

Labor and Materials Bond − This payment bond guarantees that employees/Subcontractors, and suppliers are paid for services rendered and materials supplied. The Labor and Materials Bond must be at least 100% of the contract price and must be submitted to the CITY/COUNTY upon award of the contract.

LCPtracker – Online Certified Payroll System.

Performance Bond − This bond guarantees the Contractor's performance under the terms of the construction contract and must be at least 100% of the contract price and submitted to the CITY/COUNTY following award of the contract.

Project Wage Rate Sheet (LCF 16-1.1) – eDocument used by all Contractors, as identified on the "Required Documents" table, to list *all* labor classifications and wage rate(s) applicable for the project to be set up in LCPtracker for CPR submittal.

Section 3 (24 CFR Part 75, Subpart A-D) − This law applies to all housing rehabilitation, housing construction and other public construction projects contract exceeding $200,000 or more of housing and community development financial assistance from one or more U.S. Department of Housing and Urban Development (HUD) programs.

Section 3 Resource Participation Certificate (LCF DB16-2.4) – eDocument to certify that all Contractors, as identified on the "Required Documents" table, have read the County's Section 3 Plan and contacted the resources provided for information on participating in the program.

Section 3 Actions and Outcomes (LCF DB16-2.5) – eDocument signed by all Contractors, as identified on the "Required Documents" table, to certify how the Contractor will implement Section 3 hiring practices for the project.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Special Attention of:
All CPD Division Directors
HUD Field Offices
HUD Regional Offices
All CDBG Grantees
All CoC Grantees
All HOME Participating Jurisdictions
All HTF Grantees All
ESG Grantees
All HOPWA Grantees

NOTICE: **CPD-25-01**

Issued: **January 13, 2025**
Supersedes: CPD-2023-12

Expires: This Notice remains in effect until amended, superseded, or rescinded.

Cross Reference:
Sections 70901-52 of Pub. L. No. 117-58

Subject: CPD Implementation Guidance for the Build America, Buy America Act's Buy America Preference.

Overview

This updated Community Planning and Development (CPD) Notice supersedes CPD Notice 2023-12 to provide clarified implementation guidance for the "Buy America Preference" (BAP) imposed by the Build America, Buy America Act (BABA) enacted under Division G, Title IX of the Infrastructure Investment and Jobs Act (IIJA, Pub. L. No. 117-58) signed into law on November 15, 2021. It describes how grantees can use covered CPD program funds for public infrastructure projects to bolster America's industrial base, protect national security, and support high-paying jobs.

The refreshing of this Notice is intended to provide greater clarity to grantees implementing BABA. Specifically, the Notice clarifies how the BAP applies to public infrastructure for housing projects. Projects with one- to four-units should be classified as private and not subject to BABA. Housing projects with five or more units should be considered as public infrastructure subject to BABA unless another BABA waiver or exemption applies. In addition, the Notice includes a reclassification of HOME-ARP to CPD programs not covered by the BAP, clarification on determining a project scope, BAP applicability to program income, additional recordkeeping considerations, guidance on using HUD's online project-specific waiver application website, and new resources to assist with compliance and determining when a project-specific waiver is appropriate.

This Notice also highlights issues that grantees will want to consider when preparing for

HUD's full implementation of the BAP in FY2025, as described in "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 Fed. Reg. 17001, effective March 15, 2023 ("Phased Implementation Waiver"), which establishes BAP implementation points according to a schedule across HUD programs.

More in-depth technical assistance related to both BABA compliance and best practices is available on the HUD Exchange and hud.gov websites. HUD also encourages grantees to contact their assigned local field offices to discuss issues and concerns within the regulatory framework. This Notice uses the term "grantee" generically to also include HOME participating jurisdictions. The guidance provided in this Notice is subject to change if the Office of Management and Budget (OMB) updates guidance on the application of BABA for Federal financial assistance (FFA) programs for infrastructure.

Contents

I. The Build America, Buy America Act (BABA)

The Build America, Buy America Act (BABA) was signed into law by President Biden on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) as Sections 70901-52 of Pub. L. No. 117-58. In addition to providing funding for roads, bridges, rails, and high-speed internet access, it created an incentive to increase domestic manufacturing across the country through the inclusion of BABA's "Buy America Preference" (BAP). In general, the BAP requires that all iron, steel, manufactured products, and construction materials used in public infrastructure projects funded with Federal financial assistance (FFA), as outlined in Section 70914(a) of BABA, must be produced in the United States. The intent of the BAP is to stimulate private-sector investments in domestic manufacturing, bolster critical supply chains, and support the creation of well-paying jobs for people in the United States. The preference is also intended to bolster American firms' ability to compete and lead globally for years to come by requiring entities that receive Federal infrastructure funds to use American materials and products.

The BAP applies to all spending on public infrastructure projects by Federal agencies, including HUD. In BABA, and for purposes of this Notice, the Federal infrastructure spending with a BAP is referred to as "Federal financial assistance" or "FFA." Under Section 70912(7), FFA for public infrastructure "projects" includes the "construction, alteration, maintenance, or repair of infrastructure in the United States". Under Section 70914(a), the use of American iron and steel, construction materials, and manufactured products generally applies to funding from CPD programs for public infrastructure projects. However, the BAP does not apply to "pre and post disaster or emergency response expenditures" under Section 70912(4)(B). A list of CPD disaster or emergency funding meeting these criteria can be found in Section IV.

Effective May 14, 2022, the BAP applies to infrastructure spending unless an agency issues a waiver in three limited situations: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured products or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality, or 3) where the inclusion of those products and materials will increase the cost of the overall project by more than 25 percent. Before issuing a waiver, HUD, must make a detailed written explanation for the proposed determination to issue the waiver publicly available and provide a period of not less than 15 days for public comment on the proposed waiver. Additional details on waivers can be found in Sections VIII and IX of this Notice.

A. Federal Government-wide Guidance on BABA

As a part of the Federal government's support of domestic production and manufacturing through infrastructure investments, OMB and HUD have taken several steps to implement the BAP by providing guidance and issuing HUD general waivers.

On August 23, 2023, OMB issued final rules for 2 CFR Parts 184 and 200 and provided further guidance on implementing the statutory requirements and improving FFA management and transparency (88 Fed. Reg. 57750, effective October 23, 2023). These government-wide regulations apply to HUD programs and provide direction on implementing a BAP waiver process. The new and revised regulations also provide additional guidance on construction material standards, the cost

components of manufactured products, and their definitions.

On October 25, 2023, OMB issued guidance to all Federal agencies on how to implement BABA consistently across the government. The "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" (M-24-02) (OMB Guidance) directs Federal agencies, including HUD, on how to apply the BAP and provides an overview of the BAP waiver requirements. OMB may also issue additional or updated guidance in the future, and HUD will update its guidance as necessary.

B. HUD Actions and Guidance on BABA

BABA is a new and complex statute that became effective in 2022. As such, establishing governmentwide guidance on these new statutory requirements has been an iterative process. Since the passage of BABA, HUD has worked diligently to implement the BAP for all HUD programs. Before the law became effective on May 14, 2022, HUD established a Department-wide BABA leadership committee. On June 1, 2022, HUD issued a Request for Information (RFI) to collect public comments on potential BABA implications for HUD grantees (87 FR 33193). To ease the transition in complying with the BAP, HUD proposed and received several general applicability waivers for covered FFA, which includes CPD programs. These waivers and other BABA information are available on HUD's website at https://www.hud.gov/baba. Further details on these waivers and their application to CPD programs are provided in Section V of this Notice.

CPD has taken several actions to notify and communicate with stakeholders and grantees on BABA requirements and their impact on CPD programs. Since Fiscal Year (FY) 2022, all grant transmittal letters and notices of funding opportunities (NOFOs) have included a reference to the BAP under BABA. For the FY2023 and FY2024 funding allocations, all CPD grant agreements with covered FFA included a clause to require that the grantee must comply with BABA, as applicable, which will remain in place for future allocations. Throughout 2023 and 2024, CPD has held BABA information sessions for CPD grantees and operates a dedicated email box at CPDBABA@hud.gov to answer questions from individual grantees and stakeholders. In October 2023, CPD established a HUD Exchange page (hudexchange.info/programs/baba/) as a central resource for grantees. CPD has developed technical assistance products, including quick guides, webinars, and frequently asked questions (FAQs), that are available to CPD grantees on this site.

II. Definitions

CPD has aligned its definitions regarding policy interpretations of BABA with regulations at 2 CFR part 184 and Appendix 1 of OMB guidance M-24-02 as stated below.

1. Build America, Buy America Act is defined in 2 CFR § 184.3 and means division G, title IX, subtitle A, parts I–II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58).

2. Buy America Preference is defined in 2 CFR § 184.3 and means the "domestic content procurement preference" set forth in section 70914 of BABA, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for

an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

3. Categorization of Articles. The term "categorization of articles" refers to the requirement that articles, materials, and supplies should only be classified into one of the following categories:
    i. Iron or steel products;
    ii. Manufactured products;
    iii. Construction materials; or
    iv. Section 70917(c) materials.

Each article, material, or supply should be classified in only one of the categories listed above. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

4. Component is defined in 2 CFR § 184.3 and means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.

5. Construction Materials is defined in 2 CFR § 184.3 and means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.
    (1) The listed items are:
        i. Non-ferrous metals;
        ii. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
        iii. Glass (including optic glass);
        iv. Fiber optic cable (including drop cable);
        v. Optical fiber;
        vi. Lumber;
        vii. Engineered wood, and
        viii. Drywall.

    (2) Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material.

6. Covered Materials includes the following when used in connection with an Infrastructure Project:
    (A) all iron and steel;

(B) all Manufactured Products; and
(C) all Construction Materials.

7. Covered CPD Programs. The term "covered CPD programs" means any Federal financial assistance administered by CPD that is used for public infrastructure projects, excepting expenditures related to pre and post disaster or emergency response.

8. Grantee. The term "grantee," as defined at 24 CFR 5.100, means the person or legal entity to which a grant is awarded and that is accountable for the use of the funds provided.

9. Federal Financial Assistance (FFA) has the meaning given to the term in 2 CFR 200.1 (or successor regulations) and includes all expenditures by a Federal agency to a Non-Federal Entity for an Infrastructure Project, except that it does not include:

   (A) expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191); or

   (B) pre and post disaster or emergency response expenditures.

10. Infrastructure as described in 2 CFR 184.4(c), encompasses public infrastructure projects in the United States, which includes, at a minimum: the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging. See also 2 CFR 184.4(d).

11. Infrastructure Project The term "infrastructure project" is defined in 2 CFR 184.3 and means any activity related to the construction, alteration, maintenance, or repair of public infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also 2 CFR 184.4(c) and (d).

12. Iron and Steel Products The term "iron and steel products" is defined in 2 CFR 184.3 and means articles, materials, or supplies that consists wholly or predominantly of iron or steel, or a combination of both.

13. Predominantly of iron or steel or a combination of both is defined in 2 CFR 184.3 and means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

14. Made in America Office. The term "Made in America Office" or "MIAO" means the office at the Office of Management and Budget, established by section 70923 of BABA, that is charged with implementing the BAP and establishing the procedures to review waiver requests.

15. Manufactured Products is defined in 2 CFR 184.3 and means:

    (1) Articles, materials, or supplies that have been:
        (i) Processed into a specific form and shape; or
        (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

    (2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

16. Manufacturer is defined in 2 CFR 184.3 and means the entity that performs the final manufacturing process that produces a manufactured product.

17. Non-Federal Entity means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient., as provided in 2 CFR 200.1.

18. Not Listed Construction Materials The term "not listed construction materials" refers to the category of construction materials that are subject to the BAP, but not included in HUD's specifically listed construction materials, as defined in the Phased Implementation Waiver. This includes:
    i. plastic and polymer-based products other than composite building materials or plastic and polymer-based pipe or tube;
    ii. glass (including optic glass); and
    iii. drywall.

19. Obligate means an action taken by HUD that creates a legal liability of the government for the payment of goods and services ordered or received or that administratively recognizes a legal duty on the part of the Agency that could mature into a legal liability by virtue of actions outside of HUD's control. The milestone in the federal assistance award process that establishes the obligation date varies for each program, but for many CPD programs the obligation date occurs upon HUD's execution of the grant agreement.

20. OMB Guidance . The term "OMB guidance" refers to 2 CFR Part 184, the "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" (M-24-02), issued October 25, 2023, by the Office of Management and Budget, and any subsequent guidance to rescind or replace M-24-02. This

guidance is applicable to the heads of all Federal agencies for the implementation of BABA's Buy America Preference.

21. Pre and Post Disaster or Emergency Response Expenditures. The term "pre and post disaster or emergency response expenditures" means Federal funding authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively. The BAP does not apply to pre- and post-disaster or emergency response expenditures authorized by statutes other than the Stafford Act and made in anticipation of or in response to an event that qualifies as an emergency or major disaster within the meaning of the Stafford Act.

22. Produced in the United States is defined in 2 CFR 184.3 and means:
    i. In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
    ii. In the case of manufactured products:
        1. The product was manufactured in the United States; and
        2. The cost of components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. See 2 CFR 184.2(a). The costs of components of a manufactured product are determined according to 2 CFR 184.5.
    iii. In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for more information on the meaning of "all manufacturing processes" for specific construction materials.

23. Section 70917(c) Materials. The term "section 70917(c) materials" is defined in 2 CFR 184.3 and means cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

The Federal Register Notice implementing new BABA regulations at 2 CFR 184 (88 FR 57787) clarifies that all categorizations of Covered Materials should be made based on the status of the material when it arrives at the work site. Section 70917(c) materials that are used at the work site, such as wet concrete or hot asphalt, are not subject to the BAP. However, Section 70917(c) materials may be components of manufactured products if, for example, they are used to produce precast concrete products before being transported to the work site.

24. Specifically listed construction materials. The term "specifically listed construction materials" for HUD programs includes:

a. non-ferrous metals;
b. lumber;
c. composite building materials; and
d. plastic and polymer-based pipe and tube.

III. Applicability of the BAP to CPD Programs and Projects

The BAP applies to the purchase of iron, steel, manufactured products, and construction materials for Covered CPD Programs when funds are used for the construction, alteration, maintenance, or repair of public infrastructure, as defined by BABA. This list of Covered CPD Programs is subject to change if there are any changes to the eligible uses of funds or the establishment of new programs that fund public infrastructure projects and are covered by BABA. Covered CPD Programs currently include:

- Community Development Block Grant Formula Programs (CDBG)
- Section 108 Loan Guarantee
- HOME Investment Partnerships Program (HOME)
- Housing Trust Fund (HTF)
- Recovery Housing Program (RHP)
- Emergency Solutions Grants (ESG)
- Continuum of Care (CoC)
- Housing Opportunities for Persons With AIDS (HOPWA)
- Self-Help Homeownership Opportunity Program (SHOP)
- Special NOFA for unsheltered and rural homeless
- Veterans Housing Rehabilitation and Modification Program (VHRMP)
- Community Project Funding (CPF)/Economic Development Initiatives (EDI)
- Section 4 Capacity Building
- Rural Capacity Building
- Pathways to Removing Obstacles to Housing (PRO Housing)
- Preservation and Reinvestment Initiative for Community Enhancement (PRICE)
- Continuum of Care Builds Notice of Funding Opportunity (CoCBuilds NOFO)

BABA applies to any project that involves the construction, alteration, maintenance, or repair of public infrastructure, regardless of whether infrastructure is the primary purpose of the project. Since the term "infrastructure" includes the structures, facilities, and equipment for "buildings and real property", the BAP generally applies to Covered CPD Program funds provided for housing projects. OMB acknowledged at 2 CFR 184.4(d) that some projects may be "private" in nature and are not considered public infrastructure subject to BABA. An example OMB provided in M-24-02 is a project consisting solely of the purchase, construction, or improvement of a private single-family home for personal use.

Through this notice, CPD provides further clarification on when grantees should apply BABA's requirements to housing projects as described in M-24-02.

1. Housing projects with one to four units are considered "private," consistent with HUD's definition of single-family housing. Housing projects with one to four units, including

onsite utilities and related activities are therefore not considered public infrastructure and are not subject to the BAP.

2. Housing projects with five or more units are considered public infrastructure. Housing projects with five or more units are therefore subject to the BAP unless another BABA waiver or exemption applies.

Covered Materials incorporated into the public infrastructure project are subject to the BAP, regardless of the specific project costs for which Covered CPD Program funds are expended. To determine the scope of an individual public infrastructure project for BABA purposes, grantees should use the definition of a project as determined by the Covered CPD Program in question. For example, 24 CFR 92.2 defines a HOME project as "a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking under this part. The project includes all the activities associated with the site and building."[1]

Where no program-specific definition of a project exists, grantees should use the definition of a "project" at 24 CFR 58 to assist with determining project scope: "an activity or group of integrally related activities designed by the recipient to accomplish, in whole or in part, a specific objective." Grantees cannot split an infrastructure project to avoid application of the BAP to the project, such as by dividing procurements, subgrants, cooperative agreements, etc., into separate and smaller awards or contracts, particularly where the procurements, subgrants, cooperative agreements, etc., are integrally and proximately related to the whole.

IV. CPD Programs and Funding Not Covered by the BAP

The BAP does not apply to Federal funds for "pre and post disaster or emergency response." The following list of CPD funds are administered for disaster or emergency-related purposes and therefore the BAP does not apply to them.

- Community Development Block Grant – Disaster Recovery Funds (CDBG-DR)
- Community Development Block Grant – Mitigation (CDBG-MIT)
- Community Development Block Grant – National Disaster Resilience Competition (CDBG-NDR)
- Community Development Block Grant CARES Act (CDBG-CV)
- HOME Investment Partnerships American Rescue Plan Program (HOME-ARP)
- Housing Opportunities for Persons With AIDS CARES Act (HOPWA-CV)
- Emergency Solutions Grants CARES Act (ESG-CV)
- Rapid Unsheltered Survivor Housing (RUSH)

In addition to the funding sources listed above, the BAP does not apply to projects funded solely with program income generated through any Covered CPD Program. Program income is not considered FFA.

[1] See also 24 CFR 93.2 for HTF, 24 CFR 578.3 for CoC, etc.

BABA does not apply to projects that do not include any construction, alteration, maintenance, or repair of public infrastructure. Equipment, tools, and supplies that are brought to a construction site and removed upon completion of the project or furnishings used within the finished project that are not permanently affixed to the public infrastructure project are not covered by the BAP.

V. HUD's General Waivers Applicable to Covered CPD Programs

BABA requirements may be waived by HUD and OMB when applying the BAP would be inconsistent with the public interest, when Covered Materials are not reasonably available in sufficient quantities or quality, or if the inclusion of Covered Materials produced in the United States will increase the overall project by more than 25 percent. The term "general applicability waiver" refers to waivers that have broad applicability across multiple HUD programs. The general applicability waivers for HUD FFA that are currently in effect for all Covered CPD Programs as of publication of this Notice are listed below.

General public interest waivers may be applied to all or a portion of a project without prior approval from HUD when a project meets the conditions established by the waiver. Grantees should maintain documentation demonstrating that the project meets the conditions of each general waiver applied to the project. HUD is responsible for processing and reviewing all waivers, which may only apply prospectively to future expenditures incurred after the effective date of the final waiver. The table below is current as of the publication of this Notice. Details of all proposed and approved waivers can be found at HUD's website at https://www.hud.gov/baba.

General Waiver Type	Purpose	Effective Dates
Public Interest Phased Implementation	HUD issued a public interest waiver, *"Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance"* to allow for orderly implementation of the BAP across HUD programs. The Phased Implementation Waiver establishes a schedule for the phased implementation of the BAP across CPD programs and infrastructure materials.	The public interest waiver was issued in March 2023 and established a phased implementation schedule for the application of the BAP to HUD programs through FY2025. The BAP has been in effect since November 15, 2022, for the use of iron and steel for infrastructure projects funded with newly obligated FFA through the CDBG program.
Exigent Circumstances	HUD issued a public interest waiver for exigent circumstances, "*Public Interest Waiver of Build America, Buy America Provisions for Exigent Circumstances as Applied to Certain Recipients of HUD Federal Financial Assistance*". This waiver applies when there is an urgent need by a CPD grantee to immediately	The public interest waiver for exigent circumstances is effective from November 23, 2022, until November 23, 2027, or such shorter time as HUD may announce via Notice.

General Waiver Type	Purpose	Effective Dates
	complete an infrastructure project because of a threat to life, safety, or property of residents and the community.	
***De Minimis* and Small Grants**	HUD issued a public interest titled "*Public Interest De Minimis and Small Grants Waiver of Build America, Buy America Provisions as Applied to Certain Recipients of HUD Federal Financial Assistance*". This waives the BAP for all infrastructure projects whose total cost (from all funding sources) is equal to or less than the simplified acquisition threshold at 2 CFR 200.1, which is currently $250,000. This Notice also waives the application of the BAP for a *de minimis* portion of an infrastructure project, meaning a cumulative total of no more than five percent of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of $1 million.	The public interest *de minimis,* and small grants waiver is effective from November 23, 2022, until on November 23, 2027, or such shorter time as HUD may announce via Notice.
Tribal Recipients Waiver	HUD issued a public interest waiver, "*Extension of Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance*" for the BAP as it applies to Tribal recipients.	The waiver of the BAP as it applies to Tribal recipients was effective for FFA obligated by HUD from May 23, 2023, until September 30, 2024.
Pacific Island Territory Waiver	HUD issued a *"Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Pacific Island Territory Recipients of HUD Federal Financial Assistance: Final Notice"* which waives the BAP for any FFA used for infrastructure projects in the Commonwealth of the Northern Mariana Islands, Guam, and American Samoa.	The waiver is effective from November 15, 2023, until February 15, 2025.

VI. Understanding HUD's Public Interest Phased Implementation General Waiver

Under Section 70914(a), the BAP was required to be in effect for all FFA for public infrastructure projects no later than 180 days after it was signed into law. Thus, starting May 14, 2022, all new awards of covered FFA for infrastructure projects obligated by HUD would have been required to comply with the BAP. Due to the short implementation period of 180 days, and to allow for the domestic industry and FFA recipients to have the time and notice necessary to implement BABA efficiently and effectively, HUD issued a Phased Implementation Waiver. This waiver enabled HUD to implement the BAP in an incremental process, resulting in full compliance with the BAP for all HUD obligations in FY 2025.

Covered CPD Programs began applying the BAP to public infrastructure projects beginning with CDBG funds obligated by HUD on and after November 15, 2022. The table below outlines the timeline for applicability of the BAP to each classification of Covered Materials incorporated into public infrastructure projects undertaken with Covered CPD Program funds. The columns identify categories of Covered Materials subject to the BAP and the rows identify covered HUD FFA, some of which are Covered CPD Programs and some of which are FFA from other HUD offices that may contribute funding to CPD-funded projects. Note that HUD's Phased Implementation Waiver divides the statutorily defined category of construction materials into two separate buckets for purposes of applying the BAP. See definitions of specifically listed and not listed construction materials in Section II.

To use the table, find the program(s) that funds the project under consideration, then identify which Covered Materials will be used in the project. The cell in the table where the applicable row and column intersect indicates the date on which the BAP will begin applying to each classification of Covered Materials used in the project. It is important to note that the date of obligation is typically the date on which HUD executed the legal instrument creating the relationship between HUD and the grantee for an award of FFA, commonly the date the grant agreement is signed by HUD. The date on which the grantee commits funds to a project or awards funds to a subrecipient does not impact applicability of the BAP.

For example, a grantee uses FY24 CDBG funding to build a new senior center and the HUD grant agreement was signed by the CPD Director on September 15, 2024. The grantee would use the phased implementation table to determine that:

- Since the funds were from FY24 appropriations and HUD executed the grant agreement after November 15, 2022, the BAP applies to all iron or steel materials and any specifically listed construction materials incorporated into the public infrastructure project; and
- Any not listed construction materials and manufactured products incorporated into the project are not subject to the BAP.
- However, if the grantee were to add funds from an FY25 CDBG grant in the future, then the BAP would apply to all Covered Materials used in the public infrastructure project.

A public infrastructure project may use funding from multiple Covered CPD Programs that impose the BAP to Covered Materials at different points in time. In that case, the procurement of Covered Materials for the project must comply with the program that applies the BAP most broadly.

For example, a public infrastructure project uses FY23 CDBG funding and FY24 HOME funding in the construction of a new multifamily housing development with 12 total units. HUD executed the CDBG grant agreement on September 15, 2023, and HUD executed the HOME grant agreement on September 12, 2024. The phased implementation table is used to determine that:

- HUD executed the CDBG grant agreement after November 15, 2022, but prior to FY24 appropriations. The BAP would apply to iron and steel products incorporated in the public infrastructure project.
- HUD executed the HOME grant agreement after August 23, 2024. The BAP would apply to iron and steel products, construction materials, and manufactured products (all Covered Materials) incorporated into the public infrastructure project.
- In this case, the HOME requirements are broader. Therefore, the procurement of all iron and steel products, construction materials, and manufactured products incorporated in the public infrastructure project must comply with the BAP.

Grantees who are considering adding Covered CPD Program funds for construction, maintenance, alteration, or repair of an infrastructure project that was not previously subject to BABA should contact their local CPD Field Office for technical assistance.

BAP will apply to…	Iron and Steel	Construction Materials – Specifically Listed	Construction Materials – Not Listed	Manufactured Products
CDBG Formula Grants	All funds obligated on or after November 15, 2022	As of the date HUD obligates new FFA from Fiscal Year 2024 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations
Choice Neighborhood, Lead Hazard Reduction, and Healthy Homes Production Grants	New FFA obligated by HUD on or after February 22, 2023	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024
Recovery Housing Program (RHP) Grants	New FFA obligated by HUD on or after August 23, 2023	As of the date HUD obligates new FFA from Fiscal Year 2024 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations
All other HUD FFA except HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects	New FFA obligated by HUD on or after February 22, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024
HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024

VII. Applying the BAP and HUD General Waivers to Covered CPD Programs

Grantees should assess each project undertaken with Covered CPD Program funds to determine which Covered Materials incorporated into the project are subject to the BAP based on the effective dates in the Phased Implementation Waiver described above. This section describes the process grantees should follow to determine whether a project is subject to the BAP and if the project may be exempted in whole or in part by one of HUD's general waivers.

As a part of its record-keeping, a CPD grantee should document its process to analyze if the

BAP applies to a public infrastructure project using the approach described below. An optional "Buy America Preference Applicability Checklist" is included in Appendix 2 of this Notice. Grantees may choose to use or adapt the tool to serve as a record of the analysis completed for each project.

Step 1: Type of project/activity

Determine if the project is a public infrastructure project as defined in Sections II and III of this Notice. If the project is a public infrastructure project, the analysis continues to step 2.

Step 2: Funding sources

Identify the source(s) of the project funding, including Covered CPD Programs, other HUD funds, or other Federal agency funding. If the project includes funding from a Covered CPD Program listed in this Notice, the analysis continues to Step 3.

Step 3: Covered Materials

Identify and classify all the materials that will be incorporated into the project. Each material should be classified into only one category: iron and steel, specifically listed construction materials, not listed construction materials, or manufactured products. It is important to classify all Covered Materials used in the project to accurately determine BAP applicability because the BAP may only apply to some Covered Materials used in the project under the Phased Implementation Waiver.

The classification must be made based on the material's status at the time it is brought to the location for incorporation into a public infrastructure project. If the project contains any Covered Materials, continue to Step 4.

Step 4: Date of obligation

Use the phased implementation table provided in Section VI of this Notice to determine when the BAP applies to each classification of Covered Materials, based on the obligation date for the Covered CPD Program funds. If the project uses any Covered CPD Program funds subject to the BAP based on the HUD obligation date, identify which Covered Materials must be produced in the United States. The obligation date is generally the date that HUD makes a legal commitment for Covered CPD Program funds to the grantee. The date on which a grantee commits funds to a specific project does not impact the applicability of the BAP.

The obligation date is typically when HUD executes the grant agreement, but this may vary by program. For example, the obligation date for CDBG funds can be found in the CDBG grant agreement. Refer to Appendix 1 or contact your local CPD Field Office for assistance regarding the obligation date. If the project needs a waiver of the BAP for any Covered Materials, continue the analysis to Step 5.

Step 5: General waivers

Analyze each available HUD general waiver, based upon the specific requirements of that waiver. Public infrastructure projects that meet the conditions of a general waiver may be exempt in whole or in part from the BAP. Most HUD general waivers provide exemptions for an entire public infrastructure project that meets the waiver's conditions. Grantees that apply a general waiver to an entire project should maintain documentation in their project records.

The *De Minimis and Small Grants Waiver* is uniquely useful for public infrastructure projects that are not covered in their entirety by the other general waivers. The *De Minimis and Small Grants Waiver* offers flexibility to incorporate Covered Materials of foreign or unknown origin up to 5% of the total cost of Covered Materials used in the project or $1 million, whichever is less. The total cost of Covered Materials includes all classifications of materials, regardless of whether they are subject to the BAP based on HUD's Phased Implementation Waiver. This waiver advances compliance with the BAP by reducing the administrative burden to grantees where the costs of compliance with the BAP could distract from the focus on higher value BAP-compliant items. When using the *De Minimis* waiver, the grantee should document which Covered Materials the waiver was applied to in the project records.

For example, if the total cost of Covered Materials in a project is $100,000, then the grantee should calculate 5% of that total, which equals $5,000. The grantee may use the *De Minimis* waiver to use Covered Materials from foreign or unknown sources up to $5,000. This flexibility can be used towards a specific high-value item or multiple items with lesser values, up to a total of $5,000.

Grantees should calculate this limit for all public infrastructure projects and maximize this flexibility before seeking project-/product-specific waivers. For projects where general waivers do not provide relief for Covered Materials that cannot be procured from domestic sources, a project-/product-specific waiver may be appropriate. Continue the analysis in Step 6.

Step 6: Project-/Product-Specific Waivers

If the BAP applies to a project and all general waiver flexibilities have been utilized, but there are remaining Covered Materials that can only be sourced from foreign or unknown sources, then a grantee may apply for a project-/product-specific waiver. Prior to submitting a project-/product-specific waiver, the grantee must conduct market research to demonstrate its efforts to procure domestic products. One optional resource for conducting market research is the National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP) center in the grantee's state. Grantees are encouraged to collaborate with relevant members of the project team to identify Covered Materials that cannot be obtained from domestic sources as early as possible in the project life cycle. NIST MEP's free supplier scouting resources can attempt to identify a domestic manufacturer that can supply the necessary materials or conduct the necessary market research to support the need for a project-/product-specific waiver.

As a part of its record-keeping, a grantee should document its process to analyze how the

BAP applies to a public infrastructure project using the approach described in this section and in Appendix 2. Grantees may also consult their local CPD Field Office for assistance in confirming the analysis completed for a specific project before applying for a project-/product-specific waiver.

VIII. Federal Government-wide Guidance on Project-/Product-Specific Waivers

Once a grantee has completed the analysis described in Section VII and determined that a project-/product-specific waiver is required, the grantee should consider which type of project/product-specific waiver is appropriate, as described below.

The three types of project-/product-specific waivers for which a grantee may apply are described below.

1. A **nonavailability waiver** may be requested if the types of iron, steel, manufactured products, or construction materials required for the project are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality

2. An **unreasonable cost waiver** may be requested when the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

3. A **public interest waiver** may be requested if the use of American made products would be inconsistent with the public interest. Grantees should explain how waiving the BABA requirement for this project or covered material will serve the public interest and demonstrate definite impacts on the community if specific items, products, or materials are not utilized in an infrastructure project to support this waiver type.

A. Waivers for Infrastructure Projects Funded by Multiple Federal Agencies

If a waiver is required for a public infrastructure project funded by multiple Federal agencies, the Federal agency contributing the greatest amount of Federal funds for the project may be considered the Cognizant Agency for Made in America ("Cognizant Agency") and may take responsibility for coordinating with the other Federal awarding agencies. Each Federal agency waiving the BAP must make its own waiver determination. A Cognizant Agency cannot independently issue a waiver that applies to other agencies. Grantees that fund public infrastructure projects with other Federal agencies should contact the local CPD office as early as possible to coordinate review with other Federal agencies in the event a project-/product-specific waiver is needed.

OMB guidance outlined the waiver review process for agencies to follow before issuing a waiver. Based on this guidance, HUD has developed a Department-wide project-/product-specific waiver submission process, described in Section IX.

IX. Applying for a HUD Specific Waiver

This section describes the process a grantee should follow to request a project-/product-specific waiver. Only the direct HUD recipient should submit a waiver request. Subrecipients and/or subcontractors may not submit a waiver request. The direct recipient should work with project partners to obtain necessary information. Project-/product-specific waivers cannot be approved retroactively for items that have already been purchased or incorporated into a project, so grantees should determine if a project-/product-specific waiver is needed as early as possible in the planning process.

1. Complete the BAP analysis described in Section VII of this Notice to confirm that the project is subject to the BAP and that the grantee has maximized the flexibility provided by HUD general waivers. Grantees may use the optional recordkeeping tool in Appendix 2 and contact the local CPD Field Office if technical assistance is needed.
    a) This step should always include calculating the *De Minimis* limit allowed by HUD's *De Minimis* waiver and applying that flexibility to the products used in the project that cannot be procured from domestic manufacturers, as described in Section VII, Step 5.
2. Complete the necessary market research to support the need for a waiver. Market research may be completed by the grantee or the subrecipient/contractor who has been awarded funds and is purchasing the materials that will be incorporated into the infrastructure project. Acceptable market research strategies may include one or more of the following:
    b) Document the report showing results of supplier scouting services provided by the NIST MEP, or similar supplier scouting service. For more information about the supplier scouting process, contact the local MEP center.
    c) Document that the purchaser has made a good faith effort to contact a minimum of three (3) manufacturers or suppliers to determine if a BABA-compliant material is available in sufficient quantity and satisfactory quality. Documentation may include PDF files or screenshots of Internet searches or email communications, or documentation of phone conversations that notes the date and time of the call, the contact person with whom the purchaser spoke, and a summary of the information received.
3. Collect the required information to complete a waiver application using HUD's BABA Waiver Submission Site (https://babawaiver.hud.gov/s/). Access the PDF version of the application form to see questions ahead of time to assist with preparation. Once started, the application cannot be saved, so make sure all information has been collected in advance.
4. Submit a BABA waiver application through the BABA Waiver Submission Site. For help with completing the application, access the Grantee User Manual or view the BABA Waiver System Training video. For additional technical assistance navigating the waiver system, please email BuildAmericaBuyAmerica@hud.gov.
5. HUD may contact the grantee for additional information as part of a review of the waiver application to validate the need for a waiver.

6. If an application is approved, HUD will post the proposed waiver in the Federal Register for a minimum 15-day public comment period and submit the request to the Made In America Office (MIAO). The MIAO will then review the proposed waiver and public comments for final approval, and communicate a final decision to HUD, which will communicate it to the grantee.

X. Documentation of Compliance with the BAP

This section describes documentation that grantees should maintain to demonstrate compliance with the BAP for Covered Materials, including required terms and conditions of subawards. Project records should describe the public infrastructure project, identify the Covered Materials subject to the BAP, and include documentation that all iron and steel, manufactured products, and construction materials were produced in the United States or evidence of how a waiver was applicable.

Grantees are encouraged to coordinate with relevant members of the public infrastructure project team to ensure that the Covered Materials delivered to the project site are accompanied by documentation that demonstrates compliance with the BAP. Early and frequent coordination, such as pre-bid meetings to identify any Covered Materials that may be a challenge to source domestically, are recommended.

Grantees must maintain documentation of compliance with the BAP in hard copy or electronic formats, or in grant management software and must make it available to HUD upon request for monitoring purposes. Records should be consistent with existing records retention requirements for each of the Covered CPD programs. If there are no CPD program-specific records requirements, the CPD grantee may follow "retention requirements for records," under 2 CFR § 200.334 as applicable to Federal grants. The compliance documentation must support the following:

- Documentation of the determination of BAP applicability to the Covered Materials used in the public infrastructure project. Even if the project is determined to be exempt, documentation of that determination should be retained in the grant files to support the determination. See Section VII and the optional BAP Applicability Checklist in Appendix 2.
- If a project is subject to the BAP, documentation that all Covered Materials subject to the BAP were procured from BABA-compliant sources, as determined by HUD's Phased Implementation Waiver.
- If a general waiver was applied to the project, documentation that supports that the project meets the conditions of the waiver.
- If a project-/product-specific waiver was obtained for the project, a copy of the approved waiver and market research supporting the need for the waiver.

CPD grantees are required to identify whether an activity is an infrastructure project, as defined by BABA, in the Integrated Disbursement and Information System (IDIS) or the Disaster Recovery Grant Reporting System (DRGR), depending on the covered CPD program. Grantees will be prompted to answer a question regarding BAP applicability when creating a new activity or adding new funds to an existing activity. Grantees should answer the question based on the analysis in Section VII.

If the project is subject to the BAP requirements, the following are examples of information and documentation that the grantee may retain to demonstrate compliance. This is not an exhaustive or mandatory list and simply provides examples of documentation that can be maintained to support the conditions outlined above.

A. Project budget specifying the total project cost and the cost of Covered Materials.

B. Procurement list(s) of Covered Materials purchased for the public infrastructure project, either by the grantee, subrecipient, or contractor. This list(s) should reflect, for example:

    a. Type of covered material, (iron, steel, manufactured product, or construction material);
    b. Product or Material;
    c. FFA Source(s);
    d. FFA Obligation Date(s);
    e. Costs per unit;
    f. Total cost of product purchase or contract;
    g. Manufacturer or Vendor;
    h. Actual purchaser (grantee, sub-recipient, contractor);
    i. Special Quality Standards, if applicable; and
    j. U.S. Made verification, if available (Made in the USA label, product specifications, vendor or contractor certification, etc.).

C. Documentation supporting the Covered Materials incorporated into the public infrastructure were made in the United States, for example:

    a. A copy of the label indicating the product was made in the United States;
    b. A copy of the product description or technical specifications that provides sufficient detail to conclude that the Covered Materials comply with BABA;
    c. A certificate or other documentation from the manufacturer demonstrating that the Covered Materials comply with BABA;
    d. A signed certification from the contractor of a project certifying compliance with BABA. (See Appendix 3 for an example.);
    e. A signed certification from the manufacturer of the Covered Materials certifying compliance with BABA.

D. Results of market research and product sourcing to include, for example, the following:

    a. Results of a supplier scouting search conducted by NIST MEP or another supplier scouting service;
    b. Copies of web searches used (e.g., PDF/JPEG copies of web pages showing search terms and results including sources considered, eliminated, and chosen for further research);
    c. Copies of email, fax, or mail correspondence with Covered Materials manufacturers or suppliers; and

d. Records of phone communications with Covered Materials manufacturers or suppliers, including:
    i. Dates and times of phone calls,
    ii. Phone numbers used,
    iii. Whether the phone communication was successful in making it possible to reach a staff person manufacturer or supplier able to respond to questions about BABA compliance, or whether the attempt at communication was 14 unsuccessful (e.g., left a message, phone line was busy, or phone line was disconnected),
    iv. If the phone communication resulted in reaching someone, the name of the person contacted,
    v. Notes describing the substance of the conversation (e.g., manufactured product is assembled in U.S., but the manufacturer is uncertain whether 55% of the value of the materials/components are sourced in the United States).

XI. Subrecipient Compliance with BABA Requirements

The terms and conditions of Federal awards attach to the FFA and flow down to subrecipients at all tiers. This means that all subgrantees, contractors, developers, etc., who receive Covered CPD Program funds through a CPD grantee must comply with BABA requirements. Language notifying subrecipients that the procurement of materials for public infrastructure projects must comply with the BAP must be included in all subawards, contracts, purchase orders, requests for proposals, and all other relevant procurement and bid documents. Sample language that grantees may use for this purpose is included below.

"Pursuant to the Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58, 41 U.S.C. § 8301 note, the Federal Financial Assistance used to fund this infrastructure project is required to apply a domestic content procurement preference (the "Buy America Preference" or "BAP") for all construction, alteration, maintenance, or repair of infrastructure, including buildings and real property, unless application of the BAP has been waived by HUD. Additional details on fulfilling the BABA requirements can be found at https://www.hud.gov/baba.

XII. Contact Information

Grantees that have questions on this Notice should contact their assigned CPD Field Office Representative or request technical assistance from CPD staff at CPDBABA@hud.gov.

Appendix 1 - Frequently Asked Questions

This Notice includes CPD-specific frequently asked questions (FAQs). For additional FAQs, please view the BABA HUDExchange site, hudexchange.info/programs/baba.

1. What projects or activities does the BAP apply to?

The BAP applies to the Covered Materials used in construction, alteration, maintenance, or repair of public infrastructure projects funded by Covered CPD Programs. The term "infrastructure" includes the structures, facilities, and equipment for projects traditionally considered infrastructure, and buildings and real property. For CPD programs, this may include, but is not limited to, certain funding for:

- road and sidewalk improvement projects;
- water, sewer, and other utility projects;
- broadband infrastructure;
- affordable housing construction and rehabilitation of buildings with five or more units;
- community facility construction and rehabilitation;
- homeless shelter construction and rehabilitation; and
- other activities that are defined as public infrastructure according to BABA.

2. What projects or activities are not subject to the BAP?

The BAP does not apply to projects undertaken with Covered CPD Program funds that do not involve any construction, alteration, maintenance, or repair of public infrastructure.
Examples of CPD-funded projects to which the BAP does not apply include planning, capacity building, program administration, public services, training, counseling, short-term rental assistance, land acquisition and demolition projects where there are no articles, materials or supplies that are consumed in, incorporated into, or affixed to infrastructure.
The BAP does not apply to affordable housing development projects with one to four units.

3. How can I find products that are Made in the USA?

The Federal Trade Commission requires that products advertised or labeled as "Made in the USA" are generally assembled with parts and materials made of U.S. origin. Some manufacturers provide certification letters available on their website or upon request. HUD encourages grantees to coordinate with their local NIST Manufacturing Extension Partnership (MEP) center or similar supplier scouting service to find potential domestic manufacturers of items that cannot readily be sourced domestically.

4. If a project is already underway with funds not subject to the BAP and new funding is added that is subject to the BAP, does the entire project need to comply with the BAP?

Yes, if any funds subject to the BAP are included in a project, the entire project must comply with the BAP for Covered Materials based on HUD's and any other applicable

general waivers, regardless of when the project was originally funded. Grantees who are considering adding Covered CPD Program funds for construction, maintenance, alteration or repair of an infrastructure project that was not previously subject to BABA requirements, should contact the local CPD Field Office for technical assistance.

5. How do I find the obligation date of my grant?

The obligation date is, in most cases, the date the grant agreement was signed by the CPD Director. You can locate this date by looking at the original grant agreement or navigating to IDIS or DRGR. For grants managed in IDIS, navigate to the View Grant screen and locate the date in the Obligation Date field. For grants managed in DRGR, navigate to the View Grant screen and locate the Contract Effective Date.

Appendix 2 - Optional Buy America Preference Applicability Checklist

This checklist is an optional tool that may be used or adapted to assist with determining if the Buy America Preference (BAP) applies to a public infrastructure project funded by a covered CPD program. This checklist follows the analysis steps as described in Section VII of Notice CPD-25-01 and may be retained for recordkeeping purposes.

Project Information

Grantee	
Grant Number	
Activity Name	
Activity Number (IDIS/DRGR)	

Step 1. Determine if the project is a public infrastructure project as defined in Sections II and III of Notice CPD-25-01.

☐ Yes	Continue to Step 2.
☐ No	The BAP does not apply. The BAP only applies to public infrastructure projects. Stop here.

Step 2. Is the project funded using a Covered CPD Program? Check

the box below for each CPD program funding this project.

Group A: Covered CPD Programs

☐	CDBG	☐	SHOP
☐	Section 108	☐	VHRMP
☐	HOME	☐	CPF/EDI
☐	HTF	☐	Section 4
☐	RHP	☐	Rural Capacity Building
☐	ESG	☐	PRO Housing
☐	CoC	☐	PRICE
☐	HOPWA	☐	FY23 PSH Funds

Group B: CPD Programs Not Covered by the BAP

☐	CDBG-DR	☐	CDBG-CV
☐	CDBG-MIT	☐	HOPWA-CV
☐	CDBG-NDR	☐	ESG-CV
☐	HOME-ARP		

If you selected **any** Group A programs (even if Group B programs are also selected), answer yes. If you selected **only** Group B programs, answer no.

☐ Yes	Continue to Step 3.
☐ No	The BAP does not apply to this project because it is not funded by a covered CPD program. Stop here.

Step 3. Will the project use Covered Materials?

Each material should be classified into only one category: iron and steel, specifically listed construction materials, not listed construction materials, or manufactured products. This classification is necessary to apply HUD's Phased Implementation Waiver.

Check the box below for each type of covered material incorporated into this infrastructure project.

☐	Iron or steel
☐	Specifically Listed Construction materials
☐	Not Listed Construction materials
☐	Manufactured products

If you checked any boxes above, answer yes.

☐ Yes	Continue to Step 4.
☐ No	The BAP does not apply to this project because it will not incorporate any Covered Materials. Stop here.

Analysis continues on next page.

Step 4. Based on the obligation date of the covered CPD program funds, does the BAP apply to the funding source and Covered Materials that will be used in the project?

Use the phased implementation table to determine whether the BAP applies based on the obligation date for the covered CPD program funds and classification of materials. The BAP may only apply to some Covered Materials used in the project.
The obligation date is generally the date that HUD executed the grant agreement for covered CPD program funds to the grantee. This date may be found in the grant agreement. The obligation date is not the date when the grantee commits funds to a project under a subrecipient agreement.

BAP will apply to…	**Iron and Steel**	**Specifically Listed Construction Materials**	**Not Listed Construction Materials**	**Manufactured Products**
CDBG	CDBG funds obligated on or after 11/15/22	Projects using FY24 CDBG funds	Projects using FY25 CDBG funds	Projects using FY25 funds.
RHP	RHP funds obligated on or after 8/23/23	RHP funds obligated on or after 8/23/24	RHP funds obligated on or after 8/23/24	RHP funds obligated on or after 8/23/24
All other CPD programs except HOME and HTF	Funds obligated on or after 2/22/24	Funds obligated on or after 8/23/24	Funds obligated on or after 8/23/24	Funds obligated on or after 8/23/24
HOME and HTF	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24

☐ Yes	Indicate here which Covered Materials the BAP applies to and continue to Step 5: ☐ Iron and steel ☐ Specifically listed construction materials ☐ Not listed construction materials ☐ Manufactured products
☐ No	The BAP does not apply to this project because the funds were obligated before the effective date for the program/materials used in the project. Stop here.

Step 5. HUD has issued several general waivers. Check the box next to any conditions that apply to the project.

Public infrastructure projects that meet the conditions of a general waiver may be exempt in whole or in part from the BAP.

☐	The total cost of the project from all sources (Federal and non-Federal) is $250,000 or less. If checked, the Small Grants Waiver applies, and the project is exempt from the BAP.
☐	There is an urgent need to immediately complete the project because of a threat to life, safety, or property. If checked, the Exigent Circumstances Waiver applies, and the project is exempt from the BAP.
☐	The project is in Guam, American Samoa, or the Northern Mariana Islands. If checked, the Pacific Island Territories Waiver applies, and the project is exempt from the BAP.
☐	The project is being funded by a Tribal recipient. If checked, the Tribal Recipients Waiver applies, and the project is exempt from the BAP.

If you checked any of the boxes above, answer yes below.

☐ Yes	The HUD general waiver selected above is being applied to this project, so the BAP does not apply to the entire project. Attach documentation of the conditions of the waiver and then stop here.
☐ No	Proceed to Step 5a.

Step 5a. Calculate the *De Minimis* limit for the project:

The total cost of all Covered Materials includes all iron and steel, construction materials, and manufactured products used in the project, regardless of whether the BAP currently applies under the Phased Implementation Waiver.

Enter the total cost of all Covered Materials:	
Multiply that amount by 0.05 (5%):	
Enter the lower of the number calculated in the row above or $1,000,000:	

The amount in the third row above is the *De Minimis* limit for this project. The BAP can be waived for Covered Materials from foreign or unknown sources at a cost not to exceed the *De Minimis* limit of 5% of the total cost of materials or $1,000,000 (whichever is less). The BAP

will still apply to other Covered Materials used in the project. **Attach a list of Covered Materials and their associated costs to which the *De Minimis* limit has been applied.**

Step 6. Is there a need for a project-/product-specific waiver?

If the BAP applies to a project and all general waiver flexibilities have been utilized, but there are remaining Covered Materials that can only be sourced from foreign or unknown sources, then a grantee may apply for a project-/product-specific waiver.

☐ Yes	Refer to guidance in Section VII Step 6 of Notice CPD 25-01.
☐ No	Stop here and retain this analysis in project records.

_____ _____

Completed by Date Completed

Appendix 3 - Optional Buy America Preference Certification

Project Information

Grantee	
Grant Number	
Activity Name	
Activity Number (IDIS/DRGR)	

This *"Optional Buy America Preference Certification"* is used to certify that, as required by the Build America, Buy America (BABA) Act, all of the iron, steel, manufactured products, and construction materials incorporated into a public infrastructure project are produced in the United States, unless exempted by a HUD general waiver or a project-/product-specific waiver approved by HUD and the Made in America Office (MIAO) at the Office of Management and Budget (OMB).

For Covered Materials not otherwise exempted from the Buy America Preference (BAP), the undersigned certifies the following:

- All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- All construction materials used in the project are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Attach a list of all Covered Materials procured by the signatory and used in the project.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct. WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012, 1014; 31 U.S.C. §§ 3729, 3802).

Signature	Title/Organization	Date

LABOR COMPLIANCE REQUIREMENTS

Project Bidding

1. Borrower, Prime Contractor, Subcontractor, and every Sub-Tier contractor shall include this CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (Attachment D) in all bid documents for Prime Contractor(s), Subcontractor(s) and every Sub-Tier contractor(s) and must clearly state the appropriate prevailing wage rate(s) (i.e., Federal, State, commercial and/or residential and the date of the appropriate wage schedule) for the project(s).

Construction

1. Borrower, Prime Contractor, Subcontractor, and every Sub-Tier contractor shall include the Davis Bacon/California LABOR COMPLIANCE CONTRACT ADDENDUM (DB/CA LCCA) attachment and must clearly state the appropriate prevailing wage rate(s) (i.e., Federal, State, commercial and/or residential and the date of the appropriate wage schedule) for the project(s) in every executed agreement (i.e., contract, purchase order, on-call, etc.) on the project(s).

2. Borrower shall ensure that the Prime Contractor, prior to accepting prospective Subcontractor(s) bid(s) and any Subcontractor accepting prospective lower tier Subcontractor(s) bid(s), has confirmed that each Subcontractor's and lower tier Subcontractor bid is based on the appropriate prevailing wage rate(s) and the correct job classifications for the work to be performed on the project(s) under the subcontract.

3. Prime Contractor, Subcontractor, and every lower tier Subcontractor shall maintain copies of their executed contract(s) for the project(s) and shall provide to CDH a copy of such executed contract(s) upon request within no more than three (3) business days.

4. Prior to construction start, CDH will conduct a mandatory Labor Compliance Pre-Construction Meeting(s). Prime Contractor, Subcontractor, and every lower tier Subcontractor working on the project(s) shall have, in attendance from their office, a representative responsible for managing the duties of prevailing wage labor compliance. Items to be discussed include, but are not limited to, Federal and State labor law requirements applicable to the project(s), prevailing wage requirements, respective record-keeping responsibilities, the requirement for submittal of certified payroll records to CDH, compliance documents and the prohibition against discrimination in employment, required signage, sign-in sheets/daily logs, contract language, reporting, employee reporting, possible audits, etc. The meeting will be canceled and rescheduled if Prime Contractor, Subcontractor, and/or every lower tier Subcontractor working on the project(s) representative responsible for managing the duties of prevailing wage labor compliance fail to attend the meeting unless authorized to do so by CDH in writing prior to the meeting.

5. Prime Contractor shall maintain at project site(s) daily log/sign-in sheets. Daily log/sign-in sheets shall be separated by company. Sheets shall be written in English and Spanish (and other languages, as appropriate) and shall include CDH and any project labor consultant name and phone number of the current wage monitor, for any worker to contact if there are any questions or concerns about their wages or any other concerns about the project. Prime Contractor shall enforce that all workers employed on site must sign in at the job site daily including time-in, time-out and lunch period (including any applicable travel time to and from project site). The workers must identify the Prime Contractor, Subcontractor and any lower tier Subcontractor for whom they are working and their job classification. Daily log/sign-in sheets shall be emailed to CDH no more than seven (7) days from the end of the scheduled project work week. If requested in writing by CDH, Prime Contractor shall provide to CDH any requested daily log/sign-in sheet copies within no more than three (3) business days of request. Workers who are subject to split-classifications during their tour of duty on the project(s) site shall edit the daily log/sign-in sheets on day's worker duties triggered split-classifications assignment to reflect their actual hours worked in each classification.

6. Prime Contractor, Subcontractor, and every lower tier Subcontractor shall complete in its entirety a Project ID Card for each worker employed on the worksite of the project(s). The Project ID Card shall be completed within five (5) days of execution of contract award for project(s) or before worker(s) begins employment on the project(s) site. The Project ID Card template shall be downloaded from LCPtracker. Prime Contractor, Subcontractor, and every lower tier Subcontractor may use an equivalent Project ID form if approved by CDH in advance and in writing. Prime Contractor, Subcontractor, and every lower tier Subcontractor shall be responsible for furnishing and requiring each worker employed on the worksite to have in possession and/or display such identification card as may be approved and directed by CDH or its designee. Any worker(s) employed on project(s) site found to be without their Project ID Card may be removed from site until Project ID Card is restored. Any Prime Contractor, Subcontractor, and every lower tier Subcontractor who falsifies information on a Project ID Card and/or knowingly reports incorrect information regarding a worker employed on project(s) site shall be dismissed and removed from the project and barred from conducting further business on the project. Workers need to consider wearing heavy duty ID card holders, as they work in extremely physical environments.

7. CDH and/or its designee shall conduct employee interviews and Prime Contractor, Subcontractor, and every lower tier Subcontractor agrees to have their employees interviewed for the purposes of prevailing wage compliance. Employee interviews should be conducted at a frequency and number sufficient to establish the degree of adequacy and accuracy of the CPR, and the nature and extent of any violations. They should also be representative of all classifications of employees on the project. (29 CFR 5.6 (a) (3)).

   In doubtful compliance situations, interviews with former employees may be appropriate. Employee interviews are intended to be private from their employer and Prime Contractor agrees allow CDH and/or its designee to conduct such interviews. Each employee should be informed that the information given is confidential, and that his/her identity will not be disclosed to the employer without the employee's written permission. CDH and/or its designee shall conduct at least one set of wage interviews with a representative group of workers during the project construction (PWRB 2013, Investigative Procedures Under Davis Bacon Related Act/Contract Work Hours and Safety Standards Act). CDH and/or its designee must conduct additional interviews if there is any reason to suspect a Contractor or their Subcontractor is at risk for violating wage requirements. As provided in 29 CFR 5.6(a)(5), all interviews must be conducted in confidence.

8. As permitted by Department of Labor, HUD, projects subject to DBRA and Title 8, section 16404 of the California Code of Regulations, allows Prime Contractor, Subcontractor and every lower tier Subcontractor to submit a weekly CPR electronically. Prime Contractor, Subcontractor, and every lower tier Subcontractor agrees to use LCPtracker and shall submit weekly CPR's as required during the term of construction on the project(s). LCPtracker is a web-based software CDH utilizes to collect, verify and manage prevailing wage certified payrolls and related labor compliance documentation.

   Prime Contractor, Subcontractor and every Sub-Tier shall submit, via electronic submission, documents as required by CDH, which may include, but is not limited to Certified Payroll Records (CPR)s, Statements of Compliance and other required documents. Prime Contractor, Subcontractor and every Sub-Tier and/or their designee shall sign the E(Electronic)-Signature Authorization Agreement, which must be notarized with an "Acknowledgment", and establish a Personal Identification Number (PIN), on LCPtracker. Prime Contractor, Subcontractor and every Sub-Tier will electronically sign, by use of their established PIN, all documents requiring a signature that are submitted to CDH via LCPtracker. Prime Contractor, Subcontractor and every lower tier Subcontractor agree that their PIN, once established on LCPtracker, constitutes their electronic signature and understands that any information and documents submitted using their PIN is electronically certifying their signature. Prime Contractor, Subcontractor and every lower tier Subcontractor understand that they are legally bound, obligated, and responsible by use of their PIN/electronic signature as much as would be by their handwritten signature.

9. To meet labor compliance requirements, CDH requires that each Prime Contractor, Subcontractor, and every lower tier Subcontractor agrees to complete and submit all required eDocuments on LCPtracker.

All eDocuments are accessed, submitted and approved through LCPtracker. All eDocuments are submitted through CDH's Online Certified Payroll System using a PIN. If requested in writing by CDH, Prime Contractor, Subcontractor, and every lower tier Subcontractor shall provide to CDH any additional requested compliance documentation within no more than three (3) business days of request.

One of the documents that will be required to be uploaded in LCPtracker as part of the eDocuments, is a City business license or a letter stating the reasons why no business license is required. All contractors performing work on a project site located within an incorporated city must possess or obtain that city's business license. However, if the project is located in an unincorporated area of the County, and the contractor's business is located in an incorporated city, the contractor must possess or obtain a business license within the city where their business is located. An exception to the business license requirement will be aA letter explaining the exception to the business license requirement, if the contractor's business and the project work site are both located in an unincorporated area of the County.

Prime Contractor, Subcontractor, and every lower tier Subcontractor agree to do the following on project(s):

- **A.** Submit a hard copy of the Electronic Signature Authorization form within five (5) working days of executed contract - to establish a Personal Identification Number (PIN)) Form must be completed and signed by a company owner, partner, executive officer or designee (if applicable) before a contractor may establish a PIN and electronically sign documents online.
- **B.** Complete Project ID cards as specified.
- **C.** Submit required eDocuments online within ten (10) working days of executed contract.
- **D.** Submit *non-required eDocuments and other documentation online as specified.
- **E.** Submit CPRs online within ten (10) working days of the work week's ending date.
- **F.** Submit one CPR online per project, per week.
- **G.** Report all workers, including owners, partners and superintendents, who were onsite.
- **H.** All contractors must submit CPRs online from the start of the project until the time that they finish their work on the project.
- **I.** All contractors must submit a Statement of Non-Performance online to certify that no work was performed by their company for any week of the project they are not working.
- **J.** All contractors must submit a final CPR online for the last week they are working on-site.
- **K.** All contractors must pay every worker on a weekly basis (if applicable).
- **L.** All CPRs must indicate check number or direct deposit transaction number.

(*Non-required eDocuments are those eDocuments which are not mandatory per LCPtracker; however, which may be required for a particular job on a case-by-case basis as specified.)

REQUIRED DOCUMENTS

DOCUMENT QUICK REFERENCE
Document Name/Number
Prime Contractor – Due prior to Pre-Construction Conference
Executed Contract/Purchase Order (FLCCA and/or SLCCA must be attached)
Bonds (Performance/payment or labor and material bonds)
Prime/Subcontractor – Due prior to Start of Work
Contractor Information Form[2] (LCF 16-100)
Copy of all executed Sub-Contractor contracts (FLCCA and/or SLCCA must be attached) [2]
Business Certification (LCF 16-SAM 2) [2]
E-Signature Authorization Annual Form ***(Must be notarized)*** (LCF 16-1.0) [2]
Affirmative Action Compliance Form for Construction Contracts over $10,000 (LCF DB16-2.2)*[3]
Affidavit of Compliance with California Prevailing Wage Law (LCF CA16-3.4) [5]
Apprentice and Trainees Acknowledgement (LCF 16-XX) [4]
Certification of Bidder Regarding Equal Opportunity (LCF DB16-2.1)*[3]
Certification of Understanding and Authorization Form (LCF 16-1.2)*[3|4]
Checklist of Labor Law Requirements (LCF CA16-3.1) [5]
City Business License/Exception Letter[2]
Contractor's Certification of Compliance with Davis-Bacon and Related Act Requirements (LCF DB16-2.0)*[3]
Fringe Benefit Statement Form (LCF 16-1.3)* [4]
Labor Compliance Contract Addendum – LCCA[2]
Project Wage Rate Sheet*[2](LCF -16-1.1)
Public Works Contract Award Information (DAS 140) (LCF CA16-3.2) [5]
Request for Dispatch of an Apprentice (DAS 142) (LCF CA16-3.3) [5]
Section 3 Actions and Outcomes (LCF DB16-2.5) [3]
Section 3 Resource Participation Certificate (LCF DB16-2.4)[3]
Section 3 Business Certification (LCF DB 16-2.6)
Section 3 Worker/Targeted Worker Eligibility Form (LCF DB 16-2.7)
Section 3 Cumulative Report (LCF DB 16-2.8)
Prime/Subcontractor – Due Progression of Work – Weekly
Authorization for Payroll Deduction (LCF 16-1.4)*[3]
Department of Industrial Relations – Apprentice Certification (LCF 16-SAM 5) [5]
Department of Labor Apprenticeship Certification (LCF 16-SAM 4)* [3]
Apprenticeship Program Appendix A*[3]
Prime/Subcontractor – Due Progression of Work – Monthly
Training Fund Contribution (LCF 16-SAM 8) [4|5]
DIR – eCPR Submission Confirmation (LCF 16-SAM 9) [5]
Ready-Mix Concrete Driver Certified Time Record (LCF 16-SAM 10)[5]
Prime/Subcontractor – Due Progression of Work – As Needed
C-10 Electrical Certification /Electrical Trainee (LCF 16-SAM 11)[5]
Employee CPR Certified Documentation[1|2]

*These forms are located on the LCPtracker online database discussed in, "Electronic Submission of Certified Payrolls" section and will be discussed by County CDH staff at the preconstruction conference.

[1] If applicable to contractor

[2] Applies to all regardless of Funding

[3] Federal Funds ONLY (Davis-Bacon)

[4] Federal ***and*** State Funds

[5] State Funds ONLY

STATE PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Scope of Work in the Contract or Purchase Order (as applicable) requires the payment of prevailing wages and compliance with the following requirements.

(1) Determination of Prevailing Rates

Pursuant to Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the jobsite, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

(2) Payment of Prevailing Rates

Each worker of the Contractor, Subcontractor, lower tier Subcontractor engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor, Subcontractor, lower tier Subcontractor and their respective worker(s). California law prohibits the use of credits for Employer Payments to reduce the obligation to pay the hourly straight time or overtime wages specified as the Basic Hourly Rate in the general prevailing wage determination.

(3) Prevailing Rate Penalty

The Contractor shall, as a penalty, forfeit two hundred dollars ($200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor, Subcontractor or lower tier Subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Prime Contractor, Subcontractor or lower tier Subcontractor.

(4) Ineligible Contractors

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a Prime Contractor, Subcontractor, or lower tier Subcontractor on a public works project. This list of debarred contractors is available from the DIR website at http://www.dir.ca.gov/Public-Works/PublicWorks.html. Any contract entered into between a Prime Contractor and a debarred subcontractor is void as a matter of law. A debarred Subcontractor may not receive any public money for performing work as a Subcontractor on a public works contract, and any public money that may have been paid to a debarred Subcontractor by a Prime Contractor on the project shall be returned to the County. The Prime Contractor shall be responsible for the payment of wages to workers of a debarred Subcontractor or lower tier Subcontractor who has been allowed to work on the Scope of Work.

(5) Payroll Records

Pursuant to California Labor Code section 1776, the Prime Contractor, Subcontractor, and lower tier Subcontractor shall keep accurate certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. Each payroll record enumerated herein shall contain or be verified by a

written declaration that it is made under penalty of perjury stating both of the following: (1) the information contained in the payroll record is true and correct and (2) the Prime Contractor, Subcontractor, or lower tier Subcontractor has complied with the requirements of California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Prime Contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;

(2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County or the Division of Labor Standards Enforcement of the DIR;

(3) A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Prime Contractor, Subcontractor, or lower tier Subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Prime Contractor;

(4) The Prime Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and

(5) Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Prime Contractor, Subcontractor, or lower tier Subcontractor performing a part of the Scope of Work shall not be marked or obliterated. The Prime Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.

The Prime Contractor shall have ten (10) days from receipt of the written notice specifying in what respects they must comply with the above requirements. In the event Prime Contractor does not comply with the requirements of this section within the ten (10) day period, the Prime Contractor shall, as a penalty to the County, forfeit one-hundred dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Prime Contractor.

(6) Limits on Hours of Work

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Prime Contractor, Subcontractor, or lower tier Subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of the Prime Contractor, Subcontractor, or lower tier Subcontractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

(7) Penalty for Excess Hours

The Prime Contractor shall pay to the County a penalty of twenty-five dollars ($25.00) for each worker employed on the Scope of Work by the Prime Contractor, Subcontractor, or lower tier Subcontractor for

each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Prime Contractor, Subcontractor or lower tier Subcontractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

(8) Senate Bill 854 (Chapter 28, Statutes of 2014) Requirements:

1) Prime Contractor, Subcontractors and lower tier Subcontractors shall comply with Senate Bill 854 (signed into law on June 20, 2014). The requirements include, but are not limited to, the following:

a. No Prime Contractor, Subcontractor, or lower tier Subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).

b. No Prime Contractor, Subcontractor, or lower tier Subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.

c. This project is subject to compliance monitoring and enforcement by the DIR.

d. As required by the DIR, Prime Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.

e. Prime Contractor, Subcontractors, and lower tier Subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects, new or ongoing, on or after January 1, 2016.

a. The certified payroll must be submitted at least monthly to the Labor Commissioner.

b. The County reserves the right to require Prime Contractor, Subcontractors, and lower tier Subcontractor to submit certified payroll records more frequently than monthly to the Labor Commissioner.

c. The certified payroll records must be in a format prescribed by the Labor Commissioner.

2) Labor Code section 1725.5 states the following:

A Prime Contractor, Subcontractors, and lower tier Subcontractors shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a Prime Contractor shall do all of the following:

(1) Beginning July 1, 2014, register with the Department of Industrial Relations in the manner prescribed by the Department and pay an initial nonrefundable application fee of four hundred dollars ($400) to qualify for registration under this section and an annual renewal fee on or before July 1st of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the Director to support the costs specified in Section 1771.3.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' Compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the Prime Contractor, Subcontractor or lower tier Subcontractor employs to

perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of Workers' Compensation Insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the Prime Contractor, Subcontractor, or lower tier Subcontractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The Prime Contractor, Subcontractor or Sub-Tier does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars ($2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on, or engaging in the performance of, any contract for public works until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors

are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2) of this subdivision.

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work, as defined in this chapter, entered into on or after April 1, 2015.

3) Labor Code section 1771.1 states the following:

(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted, nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars ($100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars ($8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5(h).

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars ($100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars ($10,000).

1) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.
2) A higher tiered public works contractor or subcontractor shall not be liability for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.
3) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnity or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j) (1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:
   a) Manual delivery of the order to the contractor or subcontractor personally.
   b) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

      a. The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

      b. If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered

contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars ($10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work.

4) Labor Code section 1771.4 states the following:

(a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) (A)Each contractor and subcontractor shall furnish the records specified in Section1776 directly to the Labor Commissioner, in the following manner:

(i) At least monthly or more frequently if specified in the contract with the awarding body. For purposes of this clause, “monthly” means that a submission of records shall be made at least once every 30 days while work is being performed on the project and within 30 days after the final day of work performed on the project.

(ii) In an electronic format, in the manner prescribed by the Labor Commissioner, on the department's internet website.

(B) A contractor or subcontractor who fails to furnish records pursuant to subparagraph (A), relating to its employees, shall be subject to a penalty by the Labor Commissioner of one hundred dollars ($100) per each day in which that party was in violation of subparagraph (A), not to exceed a total penalty of five thousand dollars ($5,000) per project. Penalties received pursuant to this paragraph shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(C) The Labor Commissioner shall not levy a penalty pursuant to subparagraph (B) until a contractor or subcontractor fails to furnish the records pursuant to subparagraph (A) 14 days after the requirement set forth in clause (i) of subparagraph (A).

(D) Penalties pursuant to subparagraph (B) may only accrue to the actual contractor or subcontractor that failed to furnish the records pursuant to subparagraph (A).

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c)

(1) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contract for public work, whether new or ongoing, on or after January 1, 2016.

(9) Compliance with California Labor Code section 1720.9

(1) Labor Code section 1720.9 expanded the definition of "public works" under the California Prevailing Wage Law to include the following:

(a) Hauling and delivery of ready-mixed concrete to carry out a public works, contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any pollical subdivision of the state.

(2) Section 1720.9 defines the term "ready-mixed concrete" and specifies that rate of pay shall be the current prevailing wage "for the geographic area in which the factory or batching plant is located" as determined by the DIR. The entity hauling or delivering ready-mixed concrete to carry out a public works contract shall enter into a written subcontract agreement with the party that engaged the entity to supply the ready-mixed concrete. The written agreement shall require compliance with Prevailing Wage Law.

(3) Section 1720.9 requires that the entity hauling or delivering ready-mixed concrete to carry out a public works contract shall submit a certified copy of the payroll records required by subdivision (a) of Section 1776 to the party that engaged the entity and to the general contractor within five working days after the employee has been paid, accompanied by a written time record that shall be certified by each driver for the performance of job duties in Section 1720.9(c).

(4) Section 1720.9(e) the entity hauling or delivering ready-mixed concrete for public works project shall be considered subcontractors and must register with the DIR as per Labor Code 1725.5.

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with "#" symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor's requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.

Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:

(1) Submit Contract Award Information (DAS-140)

- **a.** Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
- **b.** The DAS-140 is a notification "announcement" of the Contractor's participation on a public works project—*it is not a request for the dispatch of an apprentice.*
- **c.** Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work project.
- **d.** Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
- **e.** Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see http://www.dir.ca.gov/Databases/das/pwaddrstart.asp.

(2) Employ Registered Apprentices

- **a.** Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
- **b.** All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
- **c.** Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
- **d.** Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
- **e.** Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement

to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.

f. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).

(3) Make Training Fund Contributions

a. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.

b. Contractors may use the "CAC-2" form for submittal of their training fund contributions.

c. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.

d. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.

e. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

3. Exemptions to Apprenticeship Requirements:

The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices.

a. When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.

b. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.

c. When the Contractor has a direct contract with the Public Agency that is under $30,000.

d. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).

e. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

4. Exemption from Apprenticeship Ratios:

The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:

(1) Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or

(2) The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or

(3) The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or

(4) If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

5. Contractor's Compliance:

The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

A. APPLICABILITY

The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

1. Minimum wages and fringe benefits

i. All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in 29 CFR 5.5(d) and (e), the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of these contract clauses; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under 29 CFR 5.5(a)(1)(iii)) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii. Frequently recurring classifications

A. In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR 5.5(a)(1)(iii), provided that:

1. The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
2. The classification is used in the area by the construction industry; and
3. The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

B. The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

iii. Conformance

A. The contracting officer must require that any class of laborers or mechanics, including

helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is used in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

B. The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

C. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

D. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

E. The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under 29 CFR 5.5 (a)(1)(iii)(C) and (D). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR 5.5 (a)(1)(iii)(C) or (D) must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

iv. Fringe benefits not expressed as an hourly rate

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

v. Unfunded plans

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 CFR 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

vi. Interest In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. **Withholding**

   i. **Withholding requirements**

   The U. S. Department of Housing and Urban Development may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 CFR 5.5(a) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv), HUD may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

   ii. **Priority to withheld funds**

   The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

   A. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
   B. A contracting agency for its reprocurement costs;
   C. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
   D. A contractor's assignee(s);
   E. A contractor's successor(s); or
   F. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

3. **Records and certified payrolls**

   i. **Basic record requirements**

   A. **Length of record retention.** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
   B. **Information required** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
   C. **Additional records relating to fringe benefits**. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain

records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

D. **Additional records relating to apprenticeship** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

ii. **Certified payroll requirements**

A. **Frequency and method of submission** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to HUD if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to HUD. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system

B. **Information required** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.*, the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

C. **Statement of Compliance** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

1. That the certified payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information and basic records are being maintained under 29 CFR 5.5 (a)(3)(i), and such information and records are correct and complete;
2. That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

D. **Use of Optional Form WH-347** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR 5.5(a)(3)(ii)(C).

E. **Signature** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

F. **Falsification** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

G. **Length of certified payroll retention** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

iii. **Contracts, subcontracts, and related documents** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

iv. **Required disclosures and access**

A. **Required record disclosures and access to workers** The contractor or subcontractor must make the records required under 29 CFR 5.5(a)(3)(i)–(iii), and any other documents that HUD or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR 5.1, available for inspection, copying, or transcription by authorized representatives of HUD or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

B. **Sanctions for non-compliance with records and worker access requirements** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

C. **Required information disclosures** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to HUD if the agency is a party to the contract, or to the Wage and Hour Division of the Department

of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to HUD, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity

i. Apprentices

A. Rate of pay Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

B. Fringe benefits Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

C. Apprenticeship ratio The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5(a)(4)(i)(D). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CFR 5.5(a)(4)(i)(A), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

D. Reciprocity of ratios and wage rates Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

ii Equal employment opportunity The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5 **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6 **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11), along with the applicable wage determination(s) and such other clauses or contract modifications as the U.S. Department of Housing and Urban Development may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

7 **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8 **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9 **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. **Certification of eligibility**.

i. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).

ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).

iii. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

11 **Anti-retaliation** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- **i.** Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, or 29 CFR parts 1, 3, or 5;
- **ii.** Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5;
- **iii.** Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5; or
- **iv.** Informing any other person about their rights under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5.

B. Contract Work Hours and Safety Standards Act (CWHSSA)

The Agency Head must cause or require the contracting officer to insert the following clauses set forth in 29 CFR 5.5(b)(1), (2), (3), (4), and (5) in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety

Standards Act. These clauses must

be inserted in addition to the clauses required by 29 CFR 5.5(a) or 4.6. As used in this paragraph, the terms "laborers and mechanics" include watchpersons and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in 29 CFR 5.5(b)(1) the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in 29 CFR 5.5(b)(1), in the sum of $31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 CFR 5.5(b)(1).
3. **Withholding for unpaid wages and liquidated damages**

i. **Withholding process** The U.S Department of Housing and Urban Development or the recipient of Federal assistance may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in 29 CFR 5.5(b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

ii **Priority to withheld funds** The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

- **A.** A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- **B.** A contracting agency for its reprocurement costs;
- **C.** A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- **D.** A contractor's assignee(s);
- **E.** A contractor's successor(s); or
- **F.** A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

4. ***Subcontracts***. The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1) through (5) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR 5.5(b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of

the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5 Anti-retaliation It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- **i.** Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in 29 CFR part 5;
- **ii.** Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or 29 CFR part 5;
- **iii.** Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or 29 CFR part 5; or
- **iv.** Informing any other person about their rights under CWHSSA or 29 CFR part 5.

C. CWHSSA required records clause In addition to the clauses contained in 29 CFR 5.5(b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by 29 CFR 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

D. Incorporation of contract clauses and wage determinations by reference Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

E. Incorporation by operation of law The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by 29 CFR 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

F. HEALTH AND SAFETY

The provisions of this paragraph (F) are applicable where the amount of the prime contract exceeds **$100,000**.

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
2. The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.
3. The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

SECTION 3

(Information for the Section 3 Report will be input on LCPtracker)

Section 3 Purpose

Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701(u)) ("Section 3") requires the San Bernardino County Community Development and Housing Department ("County") to ensure that employment, training, contracting and other economic and business opportunities generated by certain United States Department of Housing and Urban Development ("HUD") financial assistance, to the greatest extent feasible, is directed to public housing residents and other low- and very low-income persons, particularly recipients of government housing assistance, and business concerns.

Applicability

As a federal participating jurisdiction, the County receives Community Development Block Grant ("CDBG") funds and Home Investment Partnerships Program ("HOME") funds on an annual basis from HUD. These funds activate Section 3 which applies to any such jurisdiction, and any of its organizations, subrecipients, or other entities receiving in excess of $200,000 combined from HUD in any one year. The County occasionally may receive additional funding that may contain a Section 3 requirement.

If developers, contractors, and subcontractors and every Sub-tier need to hire new personnel or subcontract portions of Section 3 covered work, they must, to the greatest extent feasible, ensure that employment and other economic opportunities are directed to low-and very low-income persons (Section 3 workers and Targeted Section 3 workers) and to eligible businesses (Section 3 Business) and requires the same of its contractors.

Prime Contractor, Subcontractor and every Sub-tier shall agree to do the following on project(s) that are subject to Section 3 rules as described in 24 CFR Part 75:

A. Prior to the beginning of work and upon completion of a project, contractors, subcontractors and every Sub-tier will be required to certify that they will make or have made best efforts to follow the prioritization of efforts requirements for Section 3 workers, Targeted Section 3 workers, and Section 3 business concerns as described in 24 CFR Part 75.
B. After completion of the project contractors, subcontractors and every Sub-tier will be required to certify that they have followed the prioritization of effort requirements. If the Safe Harbor benchmark requirements as described in 24 CFR Part 75 (see below) were not met, evidence of efforts made to assist low and very low-income persons with employment and training opportunities will need to be provided.
    1. Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; and
    2. Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at 24 CFR Part 75.
C. Contractor will be responsible to implement efforts to achieve Section 3 compliance. Contractors submitting bids or proposals will be required to certify that they will comply with prioritization of efforts for employment, training and contracting as described in 24 CFR Part 75.
D. Contractors, Subcontractors and every Sub-tier must make their best efforts to award contracts and subcontract to business concerns that provide economic opportunities to Section 3 workers in the following priority:
    1. Business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or non-metropolitan county)

in which assistance is located in the following order of priority (where feasible).

a. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project; and
b. YouthBuild programs.

E. Contractors, Subcontractor and every Sub-tier will provide a Self-Certification Section 3 Worker and Targeted Worker Eligibility Form for qualified Section 3 worker and Targeted Section 3 workers as defined in 24 CFR Part 75. For the purpose of Section 3 worker eligibility, the Contractor, Subcontractor and sub-tier will use the individual income to determine eligibility. The income limits will be determined annually using the guideline published at https://www.huduser.gov/portal/datasets/il.html.

F. In the event Section 3 covered projects include multiple sources of funds, including public housing financial assistance and housing and community development assistance, the Contractor, Subcontractor and Sub-tier may be required to follow the definition of Section 3 worker and Targeted Section 3 worker as defined in subpart B or subpart C of 24 CFR Part 75.

G. Contractors, Subcontractor and every Sub-tier that feel that they meet the Section 3 business requirements may self-register in the HUD Business Registry, here: http://www.hud.gov/Sec3Biz. Business may seek Section 3 business concern preference by demonstrating that it meets one or more of the following criteria:

1. At least 51 percent of the business is owned and controlled by low-or very low-income persons; or
2. At least 51 percent of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing; or
3. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers.

H. Contractor, Subcontractor and every Sub-tier agree to collect, at the time of bid/proposal, a Self-Certification Section 3 Business Concern Eligibility form from any business that seeks a Section 3 preference and that meets the Section 3 business criteria as described above and in 24 CFR Part 75.

I. Contractors, Subcontractor and every Sub-tier will incorporate the Section 3 language in all Section 3 covered contracts or agreements to ensure contractors meet the requirements of 24 CFR Part 75.

J. Contractors agree to submit a Section 3 Cumulative Report monthly, annually and upon the completion of a project. Monthly reporting will need to be submitted at the beginning of each month for the preceding month. Additionally, reporting shall be submitted on an annual basis and at the end of each project.

3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR 2010 Comp., p. 273.

§ 5.105 [Amended]

■ 2. Amend § 5.105(a) by removing ''; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.''

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

■ 3. The authority for part 14 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 42 U.S.C. 3535(d).

§ 14.115 [Amended]

■ 4. Amend § 14.115 by removing and reserving paragraph (a)(5).

■ 5. Add part 75 to read as follows:

PART 75—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

Subpart A—General Provisions

Subpart B—Additional Provisions for Public Housing Financial Assistance

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping and Compliance

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 75.1 Purpose.

This part establishes the requirementsto be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

§ 75.3 Applicability.

(a) *General applicability.* Section 3 applies to public housing financial assistance and Section 3 projects, as follows:

(1) *Public housing financial assistance.* Public housing financial assistance means:

(i) Development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937Act);

(ii) Operations and management assistance provided pursuant to section 9(e) of the 1937 Act;

(iii) Development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act;and

(iv) The entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined in paragraphs (a)(1)(i) through (iii) of this section.

(2) *Section 3 projects.* (i) Section 3 projects means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000. The threshold is $100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 or 1701z–2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4801 *et seq.*); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851*et seq.*). The project is the site or sites together with any building(s) and improvements located on the site(s) thatare under common ownership, management, and financing.

(ii) The Secretary must update the thresholds provided in paragraph (a)(2)(i) of this section not less than once every 5 years based on a national construction cost inflation factor through **Federal Register** notice not subject to public comment. When the Secretary finds it is warranted to ensure compliance with Section 3, the Secretary may adjust, regardless of the national construction cost factor, such thresholds through **Federal Register** notice, subject to public comment.

(iii) The requirements in this part apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

(b) *Contracts for materials.* Section 3 requirements do not apply to material supply contracts.

(c) *Indian and Tribal preferences.* Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of this part.

(d) *Other HUD assistance and other Federal assistance.* Recipients that are not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

§ 75.5 Definitions.

The terms *HUD, Public housing,* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5. The following definitions also apply to this part:

1937 Act means the United States Housing Act of 1937, 42 U.S.C. 1437 *et seq*.

Contractor means any entity enteringinto a contract with:

(1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or

(2) A subrecipient for work in connection with a Section 3 project.

Labor hours means the number ofpaid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

Low-income person means a person as defined in Section 3(b)(2) of the 1937 Act.

Material supply contracts means contracts for the purchase of products and materials, including, but not limitedto, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Professional services means non-construction services that require an

advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architecturalservices, and civil engineering services.

Public housing financial assistance means assistance as defined in § 75.3(a)(1).

Public housing project is defined in24 CFR 905.108.

Recipient means any entity that receives directly from HUD public housing financial assistance or housingand community development assistancethat funds Section 3 projects, including,but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

Section 3 means Section 3 of the Housing and Urban Development Act of1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means:

(1) A business concern meeting at least one of the following criteria, documented within the last six-month period:

(i) It is at least 51 percent owned and controlled by low- or very low-income persons;

(ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performedby Section 3 workers; or

(iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

(2) The status of a Section 3 business concern shall not be negatively affectedby a prior arrest or conviction of its owner(s) or employees.

(3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concernsare not exempt from meeting the specifications of the contract.

Section 3 project means a project defined in § 75.3(a)(2).

Section 3 worker means:

(1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

(i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.

(ii) The worker is employed by a Section 3 business concern.

(iii) The worker is a YouthBuild participant.

(2) The status of a Section 3 worker shall not be negatively affected by aprior arrest or conviction.

(3) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewerthan 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Small PHA means a public housing authority that manages or operates fewer than 250 public housing units.

Subcontractor means any entity thathas a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance orfor a Section 3 project.

Subrecipient has the meaning provided in the applicable programregulations or in 2 CFR 200.93.

Targeted Section 3 worker has the meanings provided in §§ 75.11, 75.21, or 75.29, and does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in section 3(b)(2) of the 1937 Act.

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

§ 75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by § 75.3 will include notice that this partis applicable to the funding and may include, as appropriate for the specific NOFA, points or bonus points for the quality of Section 3 plans.

Subpart B—Additional Provisions for Public Housing Financial Assistance

§ 75.9 Requirements.

(a) *Employment and training.* (1) Consistent with existing Federal, state, and local laws and regulations, PHAs or other recipients receiving public housing financial assistance, and their contractors and subcontractors, must make their best efforts to provide employment and training opportunities generated by the public housing financial assistance to Section 3 workers.

(2) PHAs or other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (a)(1) of this section in the following order of priority:

(i) To residents of the public housing projects for which the public housing financial assistance is expended;

(ii) To residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;

(iii) To participants in YouthBuild programs; and

(iv) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(b) *Contracting.* (1) Consistent with existing Federal, state, and local laws and regulations, PHAs and other recipients of public housing financial assistance, and their contractors and subcontractors, must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers.

(2) PHAs and other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (b)(1) of this section in the following order of priority:

(i) To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;

(ii) To Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section-8 assisted housing managed by the PHA that is providing the assistance;

(iii) To YouthBuild programs; and

(iv) To Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

§ 75.11 Targeted Section 3 worker for public housing financial assistance.

(a) *Targeted Section 3 worker.* A Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) A resident of public housing or Section 8-assisted housing;

(ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or

(iii) A YouthBuild participant.

(b) [Reserved]

§ 75.13 Section 3 safe harbor.

(a) *General.* PHAs and other recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary, if they:

(1) Certify that they have followed the prioritization of effort in § 75.9; and

(2) Meet or exceed the applicable Section 3 benchmarks as described in paragraph (b) of this section.

(b) *Establishing benchmarks.* (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the **Federal Register**. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. HUD will update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every 3 years. Such notice shall include aggregate data on labor hours and the proportion of PHAs and other recipientsmeeting benchmarks, as well as other metrics reported pursuant to § 75.15 as deemed appropriate by HUD, for the 3 most recent reporting years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported per § 75.15(a)(4).

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

(ii) The number of labor hours worked by Targeted Section 3 workers, as defined in § 75.11(a), divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

§ 75.15 Reporting.

(a) *Reporting of labor hours.* (1) For public housing financial assistance, PHAs and other recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked with public housing financial assistance in the fiscal year of the PHA or other recipient, including labor hours worked by any contractors and subcontractors that the PHA or other recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) PHAs and other recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section,and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the PHA, other recipient, contractor, or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) PHAs and other recipients may report on the labor hours of the PHA, the recipient, a contractor, or a subcontractor based on the employer's good faith assessment of the labor hoursof a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

(b) *Additional reporting if Section 3 benchmarks are not met.* If the PHA's or other recipient's reporting under paragraph (a) of this section indicates that the PHA or other recipient has not met the Section 3 benchmarks described in § 75.13, the PHA or other recipient must report in a form prescribed by HUD on the qualitative nature of its Section 3 compliance activities and those of its contractors and subcontractors. Such qualitative efforts may, for example, include but are not limited to the following:

(1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.

(2) Provided training or apprenticeship opportunities.

(3) Provided technical assistance to help Section 3 workers compete for jobs (*e.g.,* resume assistance, coaching).

(4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, andfinding job opportunities connecting residents to job placement services.

(5) Held one or more job fairs.

(6) Provided or referred Section 3 workers to services supporting work readiness and retention (*e.g.,* work readiness activities, interview clothing, test fees, transportation, child care).

(7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

(8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.

(9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

(10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.

(11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

(12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop systemas defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

(c) *Reporting frequency.* Unless otherwise provided, PHAs or other recipients must report annually to HUD under paragraph (a) of this section, and, where required, under paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

(d) *Reporting by Small PHAs.* Small PHAs may elect not to report under

paragraph (a) of this section. Small PHAs that make such election are required to report on their qualitative efforts, as described in paragraph (b) of this section, in a manner consistent withreporting requirements for the applicable HUD program.

§ 75.17 Contract provisions.

(a) PHAs or other recipients must include language in any agreement or contract to apply Section 3 to contractors.

(b) PHAs or other recipients must require contractors to include language in any contract or agreement to apply Section 3 to subcontractors.

(c) PHAs or other recipients must require all contractors and subcontractors to meet the requirements of § 75.9, regardless of whether Section 3 language is included in contracts.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

§ 75.19 Requirements.

(a) *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.

(b) *Contracting.* (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

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

(i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) YouthBuild programs.

§ 75.21 Targeted Section 3 worker forhousing and community development financial assistance.

(a) *Targeted Section 3 worker.* A Targeted Section 3 worker for housing and community development financial assistance means a Section 3 worker who is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) Living within the service area or the neighborhood of the project, asdefined in § 75.5; or

(ii) A YouthBuild participant.

(b) [Reserved]

§ 75.23 Section 3 safe harbor.

(a) *General.* Recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary if they:

(1) Certify that they have followed the prioritization of effort in § 75.19; and

(2) Meet or exceed the applicable Section 3 benchmark as described in paragraph (b) of this section.

(b) *Establishing benchmarks.* (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the **Federal Register**. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the nature of the Section 3 project, or other variables. HUD will update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every 3 years. Such notice shall include aggregate data on labor hours and the proportion of recipients meeting benchmarks, as well as other metrics reported pursuant to § 75.25 as deemed appropriate by HUD,for the 3 most recent reporting years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workersor in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported per § 75.25(a)(4).

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

(ii) The number of labor hours worked by Targeted Section 3 workers as defined in § 75.21(a), divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

§ 75.25 Reporting.

(a) *Reporting of labor hours.* (1) For Section 3 projects, recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors and subcontractors that the recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) Recipients reporting under this section, as well as subrecipients, contractors and subcontractors who report to recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment ofthe labor hours of a full-time or part- time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is

otherwise subject to requirements specifying time and attendance reporting.

(b) *Additional reporting if Section 3 benchmarks are not met.* If the recipient's reporting under paragraph (a) of this section indicates that the recipient has not met the Section 3 benchmarks described in § 75.23, the recipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

(1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.

(2) Provided training or apprenticeship opportunities.

(3) Provided technical assistance to help Section 3 workers compete for jobs (*e.g.,* resume assistance, coaching).

(4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

(5) Held one or more job fairs.

(6) Provided or referred Section 3 workers to services supporting work readiness and retention (*e.g.,* work readiness activities, interview clothing, test fees, transportation, child care).

(7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

(8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.

(9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

(10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.

(11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

(12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

(c) *Reporting frequency.* Unless otherwise provided, recipients must report annually to HUD under paragraph (a) of this section, and, where required, under paragraph (b) of this section, on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.27 Contract provisions.

(a) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

(b) Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping, and Compliance

§ 75.29 Multiple funding sources.

(a) If a housing rehabilitation, housing construction or other public construction project is subject to Section 3 pursuant to § 75.3(a)(1) and (2), the recipient must follow subpart B of this part for the public housing financial assistance and may follow either subpart B or C of this part for the housing and community development financial assistance. For such a project, the following applies:

(1) For housing and community development financial assistance, a Targeted Section 3 worker is any worker who meets the definition of a Targeted Section 3 worker in either subpart B or C of this part; and

(2) The recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients. PHAs and other recipients must report the following information:

(i) The total number of labor hours worked on the project;

(ii) The total number of labor hours worked by Section 3 workers on the project; and

(iii) The total number of labor hours worked by Targeted Section 3 workers on the project.

(b) If a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 because the project is assisted with funding from multiple sources of housing and community development assistance that exceed the thresholds in § 75.3(a)(2), the recipient or recipients must follow subpart C of this part, and must report to the applicable HUD program office, as prescribed by HUD.

§ 75.31 Recordkeeping.

(a) HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program by which the Section 3 project is governed, or the public housing financial assistance is provided or otherwise made available to the recipient, subrecipient, contractor, or subcontractor.

(b) Recipients must maintain documentation, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:

(1) For a worker to qualify as a Section 3 worker, one of the following must be maintained:

(i) A worker's self-certification that their income is below the income limit from the prior calendar year;

(ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;

(iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(iv) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or

(v) An employer's certification that the worker is employed by a Section 3 business concern.

(2) For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

(i) For a worker to qualify as a Targeted Section 3 worker under subpart B of this part:

(A) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;

(B) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(C) An employer's certification that the worker is employed by a Section 3 business concern; or

(D) A worker's certification that the worker is a YouthBuild participant.

(ii) For a worker to qualify as a Targeted Section 3 worker under subpart C of this part:

(A) An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompassa population of 5,000 people accordingto the most recent U.S. Census;

(B) An employer's certification that the worker is employed by a Section 3 business concern; or

(C) A worker's self-certification that the worker is a YouthBuild participant.

(c) The documentation described in paragraph (b) of this section must be maintained for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200.

(d) A PHA or recipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

§ 75.33 Compliance.

(a) *Records of compliance.* Each recipient shall maintain adequate records demonstrating compliance with this part, consistent with other recordkeeping requirements in 2 CFR part 200.

(b) *Complaints*. Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office.

(c) *Monitoring*. HUD will monitor compliance with the requirements of this part. The applicable HUD program office will determine appropriate methods by which to oversee Section 3 compliance. HUD may impose appropriate remedies and sanctions in accordance with the laws and regulations for the program under whichthe violation was found.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 6. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

§ 91.215 [Amended]

■ 7. Amend § 91.215(j) by removing ''24 CFR part 135'' and adding, in its place ''24 CFR part 75''.

§ 91.225 [Amended]

■ 8. Amend § 91.225(a)(7) by removing ''24 CFR part 135'' and adding, in its place ''24 CFR part 75''.

§ 91.325 [Amended]

■ 9. Amend § 91.325(a)(7) by removing ''24 CFR part 135'' and adding, in its place ''24 CFR part 75''.

§ 91.425 [Amended]

■ 10. Amend § 91.425(a)(1)(vii) by removing ''24 CFR part 135'' and adding, in its place ''24 CFR part 75''.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 11. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

■ 12. Amend § 92.508 as follows:
■ a. Remove paragraph (a)(7)(i)(B);
■ b. Redesignate paragraph (a)(7)(i)(C) as (a)(7)(i)(B); and
■ c. Add paragraph (a)(7)(xi).
The addition reads as follows:

§ 92.508 Recordkeeping.

(a) * * *
(7) * * *
(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).
* * * * *

PART 93—HOUSING TRUST FUND

■ 13. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

■ 14. Amend § 93.407 as follows:
■ a. Redesignate paragraphs (a)(5)(ii) through (ix) as paragraphs (a)(5)(iii) through (x);
■ b. Remove paragraph (a)(5)(i)(B);
■ c. Redesignate paragraph (a)(5)(i)(A) as paragraph (a)(5)(ii);
■ d. In newly redesignated paragraph (a)(5)(iv), remove ''24 part 35'' and add in its place ''24 CFR part 35''; and
■ e. Add paragraph (a)(5)(xi).
The addition reads as follows:

§ 93.407 Recordkeeping.

(a) * * *
(5) * * *
(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75, which implements section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).
* * * * *

CHAPTER I—OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT [AMENDED]

■ 15. Under the authority of 42 U.S.C. 3535(d), in chapter I, remove designated subchapter headings A and B.

PART 135 —[REMOVED]

■ 16. Remove part 135.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

■ 17. The authority citation for part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

§ 266.220 [Amended]

■ 18. Amend § 266.220(c) by removing ''; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135''.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 19. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42U.S.C. 3535(d) and 5301–5320.

§ 570.487 [Amended]

■ 20. Amend § 570.487(d) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

§ 570.607 [Amended]

■ 21. Amend § 570.607(b) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITHAIDS

■ 22. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42U.S.C. 3535(d) and 5301–5320.

§ 574.600 [Amended]

■ 23. Amend § 574.600 by adding ''and part 75'' after the phrase ''24 CFR part 5''.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 24. The authority citation for part 576 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11371 *et seq.,* 42 U.S.C. 3535(d).

§ 576.407 [Amended]

■ 25. Amend § 576.407(a) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

PART 578—CONTINUUM OF CARE PROGRAM

■ 26. The authority citation for part 578 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11381 *et seq.,* 42 U.S.C. 3535(d).

§ 578.99 [Amended]

■ 27. Amend § 578.99 by removing ''federal'' in the section heading and adding in its place ''Federal'' and removing ''24 CFR part 135'' in paragraph (i) and adding in its place ''24 CFR part 75''.

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

■ 28. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, 42 U.S.C. 1437z–7, and 3535(d).

§ 905.308 [Amended]

■ 29. Amend § 905.308(b)(10) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

30. The authority citation for part 964 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

■ 31. Revise § 964.320 to read as follows:

§ 964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 75, PHAs, their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low and very low-income persons the training and employment opportunities generated bySection 3 covered assistance (as this term is defined in 24 CFR 75.3) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 32. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.4 [Amended]

33. Amend § 983.4 by removing the definition of ''Section 3—Training, employment and contracting opportunities in development''.

§ 983.154 [Amended]

■ 34. Amend § 983.154 by removing (c) introductory text and paragraph (c)(1) and redesignating paragraph (c)(2) as paragraph (c).

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 35. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.;* 42 U.S.C. 3535(d).

■ 36. Revise § 1000.42 to read as follows:

§ 1000.42 Are the requirements of Section3 of the Housing and Urban Development Act of 1968 applicable?

No. Recipients shall comply with Indian preference requirements of Section 7(b) of the Indian Self- Determination and Education Assistance Act (25 U.S.C. 5307(b)), oremployment and contract preference laws adopted by the recipient's tribe inaccordance with Section 101(k) of NAHASDA.

Benjamin S. Carson, Sr.,

Secretary.

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AFFIRMATIVE ACTION COMPLIANCE GUIDELINES FOR CONSTRUCTION AND NON-CONSTRUCTION CONTRACTORS

AFFIRMATIVE ACTION COMPLIANCE GUIDELINES FOR CONSTRUCTION AND NON-CONSTRUCTION CONTRACTORS

These Affirmative Action Compliance Guidelines have been designed to provide Contractors with information necessary to comply with Federal regulations found under Title 41, Part 60 of the Code of Federal Regulations. It is the intent of these guidelines to ensure that equal opportunity for employment is practiced by the Contractor without regard to race, color, sex, religion, national origin, disability, and veteran's status. These guidelines provide the minimum information necessary to comply with EEO and affirmative action requirements, including the preparation of an Affirmative Action Plan that complies with federal regulations regarding Affirmative Action for federally assisted projects. Contractors are urged to contact the implementing entity or the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) officer for any necessary technical assistance in meeting Affirmative Action requirements if they are considering bidding under this contract.

I. AFFIRMATIVE ACTION COMPLIANCE PROGRAM

A. The Affirmative Action program embodies the following principles:

1. Discrimination because of race, color, age, sex, religion, national origin, marital status, disability, or veteran's status is inconsistent with the constitution, laws, and policies of the United States, State of California and San Bernardino County.

2. The implementing entity is committed to ensure that there be no discrimination by vendors, Contractors (including professional services and consultants), lessors, or lessees doing business with the implementing entity.

3. Contractors and Subcontractors agree to take affirmative personnel actions to hire and promote workers who traditionally have been discriminated against in the job market, including women, minorities, members of certain ethnic and religious groups, individuals with disabilities, and veterans.

B. Affirmative Action Step Requirements for CONSTRUCTION Contractors and Subcontractors:

1. Personnel affirmative action in recruitment, hiring, and promotion is required by Contractor and Subcontractors who have entered into a federally assisted construction or non-construction contract that exceed $10,000 or $10,000 in the aggregate over a 12-month period.

2. Contractors and Subcontractors who enter into a CONSTRUCTION CONTRACT in excess of $10,000 must take 16 specific affirmative action steps to ensure equal employment opportunity. These steps are included in 41 CFR 60-4.3 (a) (7) and are also included under "Standard Federal Equal Employment Opportunity Construction Contract Specifications" of Attachment "D" of the bid package.

C. Affirmative Action Plan requirements for NON-CONSTRUCTION Contractors:

1. All Contractors who have entered into a NON-CONSTRUCTION CONTRACT and who: 1) do business in the amount of $50,000 or more with the implementing entity in any one fiscal year and, 2) employ 50 or more employees, must develop a written Affirmative Action Program within 120 days after the contract award date.

2. All Subcontractors rendering services or supplies to a Contractor in the amount of $50,000 or more and employ 50 or more employees, must develop a written Affirmative Action Program within 120 days after the contract award date.

D. Exemptions under 41 CFR 60:

The following persons/contracts shall be exempt from this program:

1. A contract or contracts by a Contractor that do not exceed $10,000 in the aggregate over a 12-month period.

2. Contracts for Work outside the United States

3. State and Local Governments

4. Contracts with certain educational institutions

5. Work on or near Indian Reservations

6. Specific contracts and facilities found exempt by Deputy Assistant Secretary

7. Contracts with religious entities
8. National security contracts

Any Contractor who feels qualified for an exemption should contact the local Contract Compliance Officer or the U.S. Department of Labor's OFCCP Officer for further information.

II. SATISFYING AFFIRMATIVE ACTION PLAN

A. Affirmative Action Plan requirements for NON-CONSTRUCTION Contractors can be met through the following:

1. Completing a Contract Compliance Qualifying Report for Non-construction Contractors and Vendors, (refer to the form found in the "Additional Required Documents/Sample Documents" section of Attachment "D" of the bid package).

2. Completing a Contractor's Affirmative Action Policy, including methods of recruiting minorities and women. If the Contractor does not have its own Affirmative Action Policy, it may adopt the County's model Affirmative Action Policy ((refer to the form found in the "Additional Required Documents/Sample Documents" section of Attachment "D" of the bid package).

3. Following Federal Affirmative Action Plan guidelines which comply with the requirements of 41 CFR 60.2.10.

DEFINITIONS

Unless a provision of a contract otherwise requires, certain words and phrases shall be defined as follows:

A. “Affirmative Action” is a commitment to increase the number of minorities and women in the work force by setting employment goals and timetables, including action to achieve objectives. Affirmative Action seeks to ensure that discrimination is eliminated in dealings with employees or applicants for employment whether the discrimination is intentional or unintentional. In addition, Affirmative Action seeks to improve job standards and productivity through the removal of artificial and unnecessary barriers to employment and promotion and ensure that all job actions are related to job performance measures.

B. “Affirmative Action Plan” is a written affirmative plan required of Contractors and Subcontractors who have 50 or more employees and have entered into a contract with the implementing entity that exceeds $50,000, or $50,000 in contracts over a 12-month period.

C. “Contract” means a federally assisted purchase order, offer and acceptance, lease, agreement or other arrangement creating an obligation to which the implementing entity is a party, which would make one of the parties within the definition a Contractor.

D. “Construction” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services.

E. “Contractor” means a prime Contractor or Subcontractor.

F. "Covered Area" means the geographical area described in the solicitation from which the contract resulted;

G. "Director" means Director, OFCCP, U.S. Dept. of Labor, or any person to whom the Director delegates authority to;

H. “Employee” means one who performs work for compensation, or a person who is permanently or regularly employed by the Contractor or Subcontractor.

I. "Employer Identification Number" means the Federal Social Security Number;

J. “Disability” means any individual who:

1. Has a physical or mental impairment, which substantially limits one or more major life activities of such individual;

2. Has a record or such impairment or,

3. Is generally regarded as having such an impairment.

K. "Employer Identification Number" means the Federal Social Security Number;

L. “Implementing Entity” means public jurisdiction who is administering the contract.

M. “Minority” includes:

1. Black (all persons having origins in any Black African racial groups not of Hispanic origin);

2. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

3. Asian or Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);

4. American Indian or Alaskan native (all persons having origins in any of the native peoples of North America and maintaining identifiable tribal affiliations through membership and participation in community identification).

N. “Non-construction Contract” means any contract that does not fall within the definition of “Construction Contract”.

O. “Officer” means the Contract Compliance Officer of the implementing entity or U.S. Department of Labor Office of Federal Contract Compliance Program (OFCCP) Officer.

P. “Persons” means any individual, firm, co-partnership, public service, joint venture, association, social club, fraternal organization, corporation, estate, trust receiver, syndicate CITY, county, municipal corporation, district or other political subdivision, or any other group or combination acting as a unit.

Q. “Underutilization” means having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.

R. “Vietnam-Era Veteran” means a person who:

1. Served on actual duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

2. Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

S. Violation and Appeal Procedure:

1. A Contractor found in violation of equal opportunity/affirmative action laws will be referred to the U.S. Department of Labor's OFCCP Division, and the Solicitor for Labor, Associate Solicitor of Labor Relations and Civil Rights Regional Solicitors and Regional Attorney are authorized to institute enforcement proceedings by filing a complaint and serving that compliant to the Contractor (defendant), in accordance with procedures set forth in 41 CFR 60-30.5. The complaint shall contain information on the alleged violation, a prayer regarding the relief being sought, and the name and address of the attorney representing the Government. Within 20 days after receiving the complaint, the defendant shall file an answer with the Chief Administrative Law Judge, if the case has not been assigned to an Administrative Law judge.

2. The answer shall contain a statement of the facts which constitute the ground of defense, and shall: 1) specifically admit, explain, or deny each of the allegations of the complaint unless the defendant is without knowledge, or 2) state that the defendant admits all the allegations contained in the complaint. The answer may contain a waiver for a hearing and if not, a separate paragraph in the answer shall request a hearing. The answer shall contain the name and address of the defendant, or of the attorney representing the defendant. Failure to file an answer or plead specifically to an allegation of the complaint shall constitute an admission of such allegation.

3. Contractor agrees to fully comply with the laws and programs (including regulations issued pursuant thereto) identified herein. Such compliance is required to the extent such laws, programs and their regulations are, by their own terms, applicable to this contract. Contractor warrants that he will make himself thoroughly familiar with the applicable provisions of said laws, programs, and regulations prior to commencing performance of the contract. Copies of said laws, programs, and regulations are available upon request from the implementing entity's Contract Compliance Officer, or from the U.S. Department of Labor's OFCCP Officer to the extent applicable the provisions of said laws programs and regulations are deemed to be a part of this contract as if fully set forth herein.

4. Vietnam Era Veterans' Readjustment Assistance Acts of 1972 and 1974, as amended. Pub. L. 92-540, Title V, Sec 503(a), Pub. L 93-508. Title IV, Sec. 402. (38 USCA 2011-2013).

5. Rehabilitation Act of 1973, as amended (disability) Pub. l 93-112 as amended. (29 USCA 701-794).

6. California Fair Employment Practice Act. Labor Code Sec. 1410 *et seq*.

5. Civil Rights Act of 1964, as amended (42 USCA 2000a to 2000H-6) and Executive Order No. 11246, September 24, 1965, as amended.

EQUAL OPPORTUNITY CLAUSES

The Contractor and Subcontractors not found exempt under 41 CFR 60-1.5, are required to comply with the following equal opportunity clauses as a condition of being awarded a federally assisted contract. Each nonexempt prime Contractor shall include equal employment opportunity clauses in each of its nonexempt Subcontractors.

EQUAL OPPORTUNITY CLAUSE FOR FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

This clause is inserted pursuant to Executive Order 11246 of September 24, 1965, as amended, and Title VII of the Civil Rights Act of 1964, and is applicable pursuant to 41 CFR Sec. 60-1.4. The following requirements apply to Contractors and Subcontractors

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

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

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 1124 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and Subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee), refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurances of future compliance has been received from such applicant, and refer the case to the Department of Justice for appropriate legal proceedings.

In addition to the above, Contractor will agree to furnish all information and reports, including Standard form EEO-1, if applicable, to the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor's OFCCP, as required by Executive Order No. 11246 of September 24, 1965.

EQUAL OPPORTUNITY CLAUSE FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

This clause is inserted pursuant to Executive Order 11701 of January 24, 1973 and the Vietnam Era Veterans Readjustment Assistance Acts of 1972 and 1974 (P.L. 92-540, 93-508), and is applicable pursuant to 41 CFR Sec. 60-250.

(1) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based upon their disability or veterans' status in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State Employment Service System wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

(3) Listings of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.

(4) The reports required by paragraph (2) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State Employment Service. Such reports shall indicate for each hiring location, (a) the number of individuals hired during the reporting period, (b) the number of non-disabled veterans of the Vietnam Era hired, (c) the number of disabled veterans of the Vietnam Era hired, and (d) the total number of disabled veterans hired. The reports shall include covered veterans hired for on-the-job training under 38 USC Sec. 1787. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location, copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

(5) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(6) This clause does not apply to the listing of employment openings, which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

(7) The provisions of paragraphs (2), (3), (4) and (5) of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer - union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer - union arrangement for that opening.

(8) As used in this clause:

a. "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive, administrative and professional openings as are compensated on a salary basis of less than $25,000 per year. The term includes full-time employment, temporary employment of more than three days duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer - union hiring arrangement or openings in an educational institution which are restricted to students of that institution. Under most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

b. "Appropriate office of the State Employment Service System" means the local office of the federal - state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Colombia, Guam, Puerto Rico and the Virgin Islands.

c. "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.

d. "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer - union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.

(9) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(10) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(11) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era for employment, and the rights of applicants and employees.

(12) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.

(13) The Contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

(14) Collective bargaining agreement or other contract understanding that the Contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.

(15) The Contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

EQUAL OPPORTUNITY CLAUSE FOR WORKERS WITH DISABILITIES

This clause is inserted pursuant to the Rehabilitation Act of 1973 (P.L. 93-112) and 41 CFR Sec. 60-741-4.

(1) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified

(2) disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(3) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(4) In the event of the Contractor's non-compliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(5) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer.

(6) Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(7) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

(8) The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500.00 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT PROVISIONS (EXECUTIVE ORDER 11246, PURSUANT TO 41 CFR 60-4.3 (a)

1. As used in these specifications:

    a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

    b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

    c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarter Federal Tax Return. U.S. Treasury Department form 941.

    d. "Minority" includes:

        (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

        (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

        (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

        (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with the plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which the contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonable the able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance programs Office or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and

shall implement affirmative action steps at least as extensive as the follow 16 steps:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees that each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the item and place of these meetings, persons attending, subject matter discussed, and disposition of the subject manner.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment source, the Contractor shall send written

notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minor8ty and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors; adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a – p). The efforts of a Contractor association, joint Contractor-union, Contractor-community or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation, which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the executive order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum

results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the director shall proceed in accordance with 41 CRF 60-4.6.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at lease include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer) dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

    a) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid conditions for Federal and federally Assisted Construction published at 41 CFR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.

Minority Goals

The goal for the utilization of women employees on federally assisted construction contracts is set at 6.9%.

The goal for utilization of minorities, based on the Standard metropolitan Statistical Area (SMSA) for Riverside/San Bernardino County is 19%.

For additional information on these goals, please contact the OFCCP-Pacific Region at (415) 848-6969.

CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(Applicable to federally assisted construction contracts
and related subcontracts exceeding $100,000)

During the performance of this Contract, the Contractor and all Subcontractors shall comply with 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.

In addition to the forgoing requirements, all nonexempt Contractors and Subcontractors shall furnish to the owner, the following:

(1) A stipulation by the Contractor or Subcontractors, that any facility to be utilized in the performance of any nonexempt Contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

(2) Agreement by the Contractor to comply with all requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

(3) A stipulation that as a condition for the award of the Contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.

(4) Agreement by the Contractor to include, or cause to be included, the criteria and requirements in paragraph (1) through (3) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions