510-20-306
To Finance 8/10/21

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into on July 1, 2021 by and between the Town of Paradise, a municipal corporation ("Town") and Adams Ashby Group, Inc. ("Consultant").

RECITALS

Consultant is specially trained, experienced and competent to perform the CDBG-DR Multifamily Housing Program (MHP) Program Administration (Project) required by this Agreement; and

Consultant possesses the skill, experience, ability, background, certification, and knowledge to provide the services described in this Agreement on the terms and conditions described herein; and

Town desires to retain Consultant to render the CDBG-DR Multifamily Housing Program (MHP) Program Administration (Project) as set forth herein.

AGREEMENT

1 **Scope of Work.**

Except as specified in this Agreement, Consultant shall furnish all professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Work") to satisfactorily complete the CDBG-DR Multifamily Housing Program (MHP) Program Administration (Project) required by Town. The materials and work to be provided to Town are more fully described in Exhibit "A" entitled "SCOPE OF WORK." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

1.1 **Town Obligations**

All non-confidential data applicable to the Works in the possession of the Town shall be made available to the Consultant.

2 **Time of Performance.**

The work of Consultant shall commence immediately, and shall terminate upon full project completion, which shall be no later than December 31, 2026.

3 **Compensation.**

Consultant's compensation for all materials and work under this Agreement shall not exceed $5,434,013.00 and shall be in accordance with the charges set forth in Exhibit "B". In no event shall Consultant's compensation exceed Costs and Fees set forth in Exhibit "B" without the prior approval of the Town Manager.

4 **Method of Payment.**

Upon receiving proof that Consultant has paid subconsultants and suppliers, if any, Town shall pay Consultant the entire amount due within thirty (30) days after completion of the work and acceptance by the Town.

4.1. **Reimbursement Payments (as applicable).**

HCD primarily operates on a reimbursement basis for all CDBG-DR projects according to HUD and federal standards, including the requirements of 2 CFR Part 200.305(b)(3).

Payment schedules for each subrecipient will be included in the Standard Agreement, as well as documented in the program policy and procedures. HCD determines the payment request to be reasonable, accurate, and compliant with program requirements. Once a payment request is reviewed for accuracy and compliance and meets the standards for source documentation (see Subrecipient Funding below), HCD submits invoices to the State Controller for payment. HCD is committed to work with SCO to remit payment all vendors within 30 days of the receipt of a compliant invoice. All costs must be incurred and paid for by the subrecipient prior to HCD providing a reimbursement from the US Treasury. All subrecipients must submit a payment request and provide evidence that all invoices and costs incurred were paid by and the work was inspected by the subrecipient.

Subrecipients are responsible for maintaining accurate records of expenditures related to all HUD funding. HCD requires that the subrecipient provides source documentation for each expenditure charged to the grant. The subrecipient is required to designate a staff member who is responsible for the oversight of expenditures, as well as obtaining the necessary approvals for the expenses according to the Standard Agreement for the project. If the subrecipient is charging staff time to the grant, they are required to provide timesheets and redacted paystubs for each staff person included on the invoice.

All subrecipients must submit a payment request for reimbursement to HCD through Grants Network and provide evidence that all invoices and costs incurred were paid by the subrecipient and the work was inspected by the subrecipient. If a payment request is complete with all supporting documentation, HCD reimburses the subrecipient for eligible incurred costs.

Upon receipt of a funds request in Grants Network, the Representative II (program) has five days to review and either (1) approve the funds request and submit for further approvals, or (2) deny the funds request and ask for additional or corrected back up documentation. Once the Representative II (program) approves the payment request, the Manager I (program) reviews and approves the funds request in Grants Network. Upon the appropriate Manager I approval, Representative II for the appropriate program packages the documentation packet and delivers to the Representative II (fiscal/procurement/ reporting) for processing.June 2020 22

For reimbursements made directly to HCD (State Operations), source documents are typically internal documents such as timesheets or invoices from vendors. Timesheets verify how many hours are worked during a pay period and for what rate of pay. All subrecipiets use time sheets to track their time for direct billing. The individual time sheet is submitted to Business & Housing, and Finance complete the process for warrants. Budgets track time and rate of pay. Operations are traced in Grants Network.

Once a payment request is reviewed for accuracy and compliance and meets the standards for source documentation, HCD submits invoices to the State Controller for payment. HCD is committed to work with SCO to remit payment to all vendors within 30 days of the receipt of a compliant invoice.

4.2 **Evidence of Performance.**

The Consultant shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including, but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement.

5 **Labor Compliance.**

The Consultant agrees to comply with the provisions of the California Labor Code and Davis Bacon requirements as applicable.

6 **Extra Work.**

At any time during the term of this Agreement, Town may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Town to be necessary for the proper completion of Consultant's services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without prior written authorization from Town.

7 **Termination.**

This Agreement may be terminated by the Town immediately for cause and without cause upon fifteen (15) days written notice of termination to the Consultant. Upon termination, Consultant shall be entitled to compensation for work properly performed up to the effective date of termination.

8 **Ownership of Documents.**

All reports, plans, studies, documents, and other writings prepared by and for Consultant, in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the Town upon payment to Consultant for such work, and the Town shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents, and other writings to Town within three (3) days after written request. Consultant shall not be responsible for liabilities, losses, or claims resulting from unauthorized modifications, or reuse other than original intended purpose. Consultant shall retain the right to access and use such work product produced during the term of this contract.

9 **Licensing of Intellectual Property.**

This Agreement creates a nonexclusive and perpetual license for Town to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in documents or works of authorship fixed in any tangible medium of expression, including, but not limited to, data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents and Data"). Consultant represents and warrants that Consultant has the legal right to license any and all Documents and Data. Consultant makes no such representation and warranty in regard to Documents and Data which may be provided to Consultant by Town. Town and or the Consultant shall not be limited in any way in its use of the Documents and Data at any time.

9.1 **Confidentiality.**

All proprietary ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such proprietary materials shall not, without the prior written consent of Town, be used by Consultant for any purposes other than the performance of the services under this Agreement. Nor shall such proprietary materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant, which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Town's name, seal, or photographs relating to project for which Consultant's services are rendered, or participate in any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Town.

9.2 **Consultant's Books and Records.**

9.2.a Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, expenditures and disbursements charged to Town for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

9.2.b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of **three (3) years**, or for any longer period required by law, from the date of termination or completion of this Agreement.

9.2.c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Town Manager, Town Attorney, Town Finance Director, or a designated representative of these officers. Copies of such documents shall be provided to the Town for inspection at Town Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

Where Town has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, Town may, by written request by any of the above-named officers, require that custody of the records be given to the Town and that the records and documents be maintained by Town Hall.

9.2.d. State and Federal Monitoring. The State of California, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, the Office of the Inspector General, or any of their duly authorized representatives, must be allowed access to any books, documents, papers, and records of CONSULT ANT or any subcontractor which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts, and transcriptions from such records including, but not limited to, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and any other data relating to matters covered by this Agreement. Such access must be granted at any time during normal business hours and as often as deemed necessary by the requesting party.

10 Independent Consultant.

It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent Consultant and shall not act as an agent or employee of the Town. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to Town's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

11 Interest of Consultant.

Consultant (including principals, associates, and professional employees and subconsultants) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

a. will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the Town or any Town official, other than normal agreement monitoring; and

b. possesses no authority with respect to any Town decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

12 Professional Ability of Consultant.

Town has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall have Lorie Adams manage and approve the work of all persons performing professional work under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

13 Compliance with Laws.

Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

14 Licenses.

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

15 Indemnity.

Consultant agrees to defend, indemnify and hold harmless the Town, its officers, officials, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therein), arising from Consultant's negligent performance, intentional acts, misconduct or omissions relating to the work under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except for any such claim arising from the sole negligence or willful misconduct of the Town, its officers, agents, employees or volunteers.

16 **Insurance Requirements.**

Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the Agreement, the insurance coverage and policies as set forth in Exhibit "C" attached hereto.

17 **Additional Federal and State Provisions.**

Consultant shall also comply with the federal and State of California provisions relating to Anti Lobbying Certification and the CDBG-DR Program Terms and Conditions which are respectively attached as Exhibit "D" and Exhibit "E" and made part of this contract by reference.

18 **Notices.**

Any notice required to be given under this Agreement shall be in writing and will either be served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time mailing if mailed as provided in this section.

If to Town: Kevin Phillips
Town Manager
5555 Skyway
Paradise, CA 95969

If to Consultant: Lorie Adams
Principal
Adams Ashby Group, Inc.
770 L. Street, Ste. 950
Sacramento, CA 95814

19 **Entire Agreement.**

This Agreement constitutes the complete and exclusive statement of Agreement between the Town and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations are superseded in total by this Agreement.

20 **Amendments.**

This Agreement may be modified or amended only by a written document executed by both Consultant and Town and approved as to form by the Town Attorney.

21 **Assignment and Subcontracting.**

The parties recognize that a substantial inducement to Town for entering into this Agreement is the professional reputation, experience, and competence of Consultant. Assignments of any or all rights, duties, or obligations of the Consultant under this Agreement will be permitted only with the express prior written consent of the Town. No subconsultants (other than those listed on Exhibit "A") shall work under this Agreement without the prior written authorization of the Town. If Town consents to such subcontract, Consultant shall be fully responsible to Town for all acts or omissions of the subconsultant. Nothing in this Agreement shall create any contractual relationship between Town and a subconsultant of the Consultant nor shall it create any obligation on the part of the Town to pay or to see to the payment of any monies due to any such subconsultant other than as otherwise required by law.

22 **Waiver.**

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

23 **Severability.**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

24 **Controlling Law Venue.**

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Butte.

25 **Litigation Expenses and Attorney's Fees.**

If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

26 **Mediation.**

The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally.

27 **Mediators.**

The Town and Consultant shall meet to select a mediator from a list of five mediators by each striking the names of two different proposed mediators and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

28 **Execution.**

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

29 **Authority to Enter Agreement.**

Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

30 **Prohibited Interests.**

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

31 **Equal Opportunity Employment.**

Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, disability, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Reference Exhibit D for additional requirements.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the date first written above.

TOWN OF PARADISE

By: ______________________

Kevin Phillips, Town Manager

CONSULTANT

By: L Adams

Lorie Adams, Adams Ashby Group, Inc.

APPROVED AS TO FORM:

By: ______________________

Scott Huber, Town Attorney

ATTEST: August 10, 2021

By: Dina Volenski

Dina Volenski, Town Clerk

Exhibit A

Scope of Work

Unless indicated otherwise herein, Adams Ashby Group, Inc. shall furnish all labor, materials, transportation, supervision and management and pay all taxes required to complete the project described below:

Adams Ashby Group, Inc. will administer the Town CDBG-DR MHP allocation in accordance with the DR-MHP Policies and Procedures. The areas outlined below define the key areas for the scope of work must fully adhere the DR-MHP Policies and Procedures.

In consultation with Adams Ashby Group, Inc., the Town anticipates publishing a solicitation for large and small MHP projects through a Request for Proposal process. Adams Ashby Group, Inc., in coordination with the Town, will review and rank the applications to select the most viable projects that will support community recovery of needed housing. Adams Ashby Group, Inc. will then underwrite each prospective applicant and assist in the preparation of the Project Application to HCD. Adams Ashby Group, Inc. will facilitate the program implementation.

AREA 1: Standard Agreement Process with HCD

- Respond to any deficiencies in the Town's Due Diligence submission to HCD, including development of Town policies and procedures necessary for program implementation.
- Develop RFPs and applications for multifamily development projects. Submit to HCD for approval. RFP anticipated to be released by mid-August 2020.

AREA 2: Solicitation Review and Analysis of Large and Small Multifamily Housing Projects

- Implement local Project Solicitation, Selection, and Appeals Process for large MHP (8+ units), including application rounds and/or open applications.
- Evaluate large MHP solicitation and selection process.
- Develop a Project Solicitation for small MHP (1-7 units).
- Implement local Project Solicitation, Selection, and Appeals Process for small MHP, including application rounds and/or open applications.
- Review applications according to, but not limited to, DR-MHP Development Application Review and Underwriting Checklist and the Uniform Multifamily Regulations; local prioritization criteria; application benchmarks including eligible activities, project type eligibility, and national objective criteria; quality of the application according to long-term viability, verification of financial feasibility, cost reasonableness, project timeliness and schedule; Developer capacity, and compliance with Article XXXIV, among other criteria.
- Rank applications according to federal, state and local priorities and criteria, provide recommendations to the Town for selection and provide written justification to HCD.

AREA 3: Project Application and Underwriting Oversight

- Complete the Environmental Review Process for each application.
- Coordinate with the Town and developers to submit Project Applications to HCD.
- Oversee underwriting of each project, including costs, financial feasibility, market demand, Developer qualifications, environmental review, land use, and certifications.

AREA 4: Development Agreement Creation and Execution

- Lead the coordination of the legal documents outlining the program operations including the Master Standard Agreement, Notice to Proceed, and Regulatory Agreement.
- Create development agreements for each project based on federal, state and local requirements.

AREA 5: Project Requirement Development and Process Oversight

- Coordinate loan and closing process and documents with selected developers, Town staff, and HCD.
- Ensure projects are developed according to Eligible Activities, Project Eligibility, and Project Priority criteria and the Contract Regulatory Agreements.
- Oversee adherence to Construction Standards and Requirements.
- Oversee project operations, including the legal documentation, agreements, conditions, labor and wage requirements, procurement, and performance goals and timelines.
- Review and approve Developer Management Plan prior to construction.
- Review and approve Marketing Plan for compliance and local demographic and housing needs.
- Develop Uniform Relocation Assistance and Real Property Acquisition Act Policy for multifamily housing projects.
- Develop Affirmative Fair Housing Marketing Plan and Lease Up Policy for small rental projects.
- Provide Federal Labor Compliance guidance to developers in pre-construction phase and monitor throughout construction phase.
- Participate in the development of CDBG-Disaster Recovery Infrastructure grant applications that link to proposed multifamily housing projects.

AREA 6: Fiscal Review and Oversight

- Review fiscal requirements for projects including Notice to Proceed Rider, committed sources of investment funding, Duplication of Benefits, cost reasonableness, eligible costs, form of assistance, and allocation methodology.
- Monitor and report Developer project Income.
- Oversee disbursement of funds according to agreements, recapturing of funds and budget monitoring.

AREA 7: Project Compliance Monitoring

- Develop a system in which projects and developers can be effectively and efficiently monitored for compliance during the first two years of implementation, including construction, tenant selection, management, and annual certifications according to the Master Standard Agreement and CDBG-DR Grant Administrative Manual.
- Conduct annual compliance monitoring including physical, project and financial monitoring for two years.
- Coordinate contract monitoring with HCD, including documentation and in-person monitoring.
- Develop honed long-term monitoring process for the Town to implement over the affordability lifetime of the projects.

AREA 8: Report Development

- Oversee all reporting as specified in the Master Standard Agreement.
- Provide monthly updates to Town staff.
- Prepare monthly status reports for each project.

- Prepare the annual report and coordinate annual audit.

AREA 9: Training, Technical Assistance and Staff Augmentation

- Provide training and capacity building to Town staff on all aspects of multifamily development, program operation, compliance, financing, close out and monitoring, as well as all federal cross-cutting requirements including fiscal and program compliance, Section 3, NEPA/CEQA, Uniform Administrative Act, etc.
- Provide training and technical assistance to Developers and Project Managers on HUD, HCD, and local requirements for project development and implementation.
- Provide training and technical assistance to Town on the development, execution, and monitoring of Multifamily Housing projects.
- Participate in HCD technical assistance of program requirements, risk assessment, compliance, and capacity building.
- Assist the Town with a staffing assessment based on the amount of funding being received, and provide temporary staff augmentation while program staff are being recruited.

Scope of Work Estimated Timeline*
June 8, 2021: Consulting contract awarded
September 2021: Release Request for Proposals for both MHP programs
December 31, 2022: Final Date to submit Project Applications
January 2023: HCD Reallocation of Unused Funds
December 31, 2023: Final Date for HCD to Issue Notices(s) to Proceed
May 31, 2026: Final Date to Submit Certificate of Occupancy for all Projects
December 2026: HCD-HUD Grant Closeout

**All deadlines are subject to change.*

At any time prior to the end of the contract term an assessment may be made of the value of the professional services herein delineated and thus far received. At the conclusion of the assessment, it may be determined that Adams Ashby Group, Inc. owes certain fulfillment and/or deliverables for which the remaining payments may be withheld up to 20% of the contract. The assessment may determine that there is additional work to be amended to this scope of work. In the event of an amendment, Adams Ashby Group, Inc. shall be notified and the amendment submitted and duly authorized in accordance with TOWN Policy and Procedure. Otherwise, pertaining to this contract's scope of work it is Adams Ashby Group, Inc.'s responsibility to remain within the term and amount of the contract. If the terms and/or conditions of this contract including the amounts, rates, time and/or duration are exceeded in any way without fully executed amendment, Adams Ashby Group, Inc. may not be reimbursed.

Duties and obligations of Adams Ashby Group, Inc.:

- Since this is a professional service contract, this is the appropriate point in the contract to stipulate any subjective expectation that may be implied by their profession but once explicated become performance elements of the contract.
- State all specific elements of the contract for which specific payment due as objectively as possible. Whether contract is based on hourly, daily, weekly, monthly rates; flat rate for deliverables; project milestone incremental payments; charges for use of particular (i.e., therapeutic) equipment or implements; any reports, criteria and schedule

- If expenses are allowed, specify what is reasonable and/or reimbursable AND always state that expenses (unless per diem) must be preapproved and accompanied by receipts. There should be a cap to the expenses.
- If "materials" are required, specify what they will (or might be) and some approximation not to exceed amount. Unless the materials are provisions of the "house" of the Consultant, they will require receipts to be presented with invoice stipulating their charge.
- State any circumstances under which no payment will be made.
- State if payments are contingent on specific delineation on the invoice(s) such as coding or regulatory designated description.
- Recommend that rates be laid out in table format if possible for clarity and ease of processing payments.
- State specifically that payments stipulated are the Consultant's only compensation.

Duties and obligations of the TOWN:

TOWN's obligations may be:

- Make any relevant notification promptly
- Provide data promptly
- Provide schedules or set up meetings or respond to presentation of information promptly
- Pay upon provision as herein stipulated and after presentation of appropriate receipts and/or invoice.
- If possible avoid stipulating payment within specific period. If absolutely necessary state no less than 30 days and 60 days is not atypical.
- Town does not pay interest or penalties.

Exhibit B

Cost and Fees

Labor Rates

Hourly Billable Rates for the term of this contract are as follows:

Hourly Rate Cost Schedule	Hourly Rate
Adams Ashby Group, Inc.	
Lorie Adams/Paul Ashby	$150.00
Support Staff/Labor Compliance Officer	$85.00
Harsany & Associates, LLC	
Doug Harsany/Cindy Harsany	$150.00
Support Staff	$85.00

Travel

All costs for travel have been included in hourly rates and are based on Harsany & Associates completing four (4) site visits and Adams Ashby Group, Inc. completing monthly site visits and additional site visits for labor compliance as needed. All other visits will be virtual. Virtual meetings and trainings are requested to the maximum possibility to reduce emissions and support carbon footprint reduction. No travel will be separately reimbursable under this agreement.

Other Direct Costs

Costs related to environmental reports and other outside studies required to support the environmental process are allowable expenses.

An escalation fee of 5% will be implemented in month 37 of the contract term.

Program Administration estimates

Due Diligence Submission – meet with staff; develop policies and procedures for Construction Management & Implementation, Anti-Lobbying, Conflict of Interest, Fiscal, Timekeeping. Procurement (Federal Compliance), URA, Monitoring, Labor Compliance & Section 3; and organizational chart and duty statements for program/project implementation; support review and due diligence submission, as needed; meet with State; respond to changes requested by State; Public Information Binders(s); Record Management Systems; Master Standard Agreement management and reporting; provide monthly updates to the Town; and prepare annual reports and coordinate HCD audits.. $83,700.00

RFP/Project Selection Process – (Assumes two releases for each large and small projects) meet with staff; develop RFPs; submit for State approval; receive feedback and make requested changes; develop applications, proformas, and other solicitation documents; develop, submit, and issue underwriting criteria for each RFPs; prepare for issuance and implement solicitation process; hold pre-application meetings; respond to questions and provide information and amendments as required; monitor and review application process and eligibility, provide support to address appeals; review applications and evaluate; complete underwriting ensure compliance and cost reasonableness; review Article XXXIV and discuss with Town Council; provide ranking of applications received; review projects with Town staff; review and discuss Environmental process(es); work with developers and property owners to address project contingencies and secure required documentation; work with Town to address any project deficiencies, create and submit Application to State; meet with State; finalize application/contract with State for Projects $250,950.00

Commitment and Closing Document Template Creation – create a Commitment Agreement template for each large and small projects; review the MHP Commitment Agreement templates (Town will also review); create all closing and legal document templates; review all closing document templates (Town will also review); and create document templates for reporting through the development and construction period $72,600.00

Training & Capacity Building – provide training and capacity building on all aspects of multifamily development, program operations, compliance, financing, close-out, monitoring and other Federal requirements related to the Federal programs; training and technical assistance to developers, project managers, and property owners on HUD, HCD and local requirements; participate in HCD training, risk assessments, compliance and capacity building; staffing assessment and capacity bridge (TBD based on assessment) $150,000.00

Per-Project Fee Matrix estimates

Commitment and Closing, Per Project – adapt created Commitment Agreement template for each MHP project; work with Town and developers/property owners to address any outstanding commitment contingencies; guide projects from conception to commitment, finalize/execution of Commitment Agreement; adapt created closing document templates for each MHP project; work with Town and developers/property owners to address any outstanding closing contingencies; guide projects from commitment to closing, finalization and execution of closing documents; coordinate closing of projects with HCD; review Section 3/MBE-WBE criteria; review Developer Management Plan; review Marketing Plan and AFHMP Plan for compliance .... $18,300.00-$21,450.00

Project Development/Construction – meet with staff, develop timeline and communication process; hold pre-construction conference with contractor/developer/property owner; hold pre-construction conference with contractors and subs regarding labor compliance, Section 3 compliance, and other; issue Notice to Proceed; obtain all required insurance, bonding, and other required documentation; work and coordinate with construction managers/property owner; oversee implementation and requirements related to the Construction Standards and requirements defined in the Policy and Procedures with Architects and construction management team; implement Labor Compliance and Section 3 for the project during construction, DIR PWC 100 set up; provide monthly status report to Town staff; provide and attend meetings with State; oversee adherence to standards/requirements, including quarterly site inspections of project; oversee project operations, including performance goals and timeliness; ensure fiscal compliance of projects with grant requirements; and oversee disbursement of fund and monthly draw requests $102,450.00

Exhibit C

Insurance Requirements for Professional Services

*Please provide a copy of this document to your insurance agent.

Consultant shall procure and maintain for the duration of this contract, insurance against claims for injuries to persons or damages to property that may arise from or be in connection with the performance of the work hereunder by Consultant, Consultant's agents, representatives, employees and subcontractors. Before the commencement of work Consultant shall submit Certificates of Insurance and Endorsements evidencing that Consultant has obtained the following forms of coverage:

A. MINIMUM SCOPE AND LIMITS OF INSURANCE - Coverage shall be at least as broad as:

Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: ISO's Commercial Automobile Liability coverage form CA 00 01.

Commercial Automobile Liability: Covering any auto (Code 1) for corporate/business owned vehicles, or if Consultant has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

Personal Lines automobile insurance shall apply if vehicles are individually owned, with limits no less than $100,000 per person, $300,000 each accident, $50,000 property damage.

Workers' Compensation Insurance: As required by the State of California with Statutory Limits and Employer's Liability Insurance with limits of no less than $1,000,000 per accident for bodily injury and disease. *(Not required if Consultant provides written verification he or she has no employees.)*

Professional Liability (Errors and Omissions): Insurance appropriate to Consultant's profession, with limits no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate.

If Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Town requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Town.

B. OTHER INSURANCE PROVISIONS - The insurance policies are to contain, or be endorsed to contain, the following provisions:

1) The Town of Paradise, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL and Commercial Auto policies with respect to liability arising out of work or operations performed by or at the direction of the Consultant, including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 forms if later revisions used).

2) For any claims related to this contract, Consultants insurance coverage shall be primary insurance coverage at least as broad as ISO Form CG 20 01 04 13 as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees and volunteers shall be excess of Consultants insurance and shall not contribute with it.

3) Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Town.

C. WAIVER OF SUBROGATION: Consultant hereby grants to Town a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Town by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Town has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Town for all work performed by the Consultant, its employees, agents and subcontractors.

D. SELF-INSURED RETENTIONS: Self-insured retentions must be declared to and approved by the Town. The Town may require Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Town.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Town.

F. VERIFICATION OF COVERAGE: Consultant shall furnish Town with original certificates of insurance including all required amendatory endorsements (or copies of the applicable policy language affecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

G. SPECIAL RISKS OR CIRCUMSTANCES: Town reserves the right to modify these requirements including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

H. SUBCONTRACTORS: Consultant shall include all subcontractors as insured under its policies or require all subcontractors to be insured under their own policies. If subcontractors are insured under their own policies, they shall be subject to all the requirements stated herein, including providing the Town certificates of insurance and endorsements before beginning work under this contract.

I. CLAIMS MADE POLICIES: If any of the required policies provide coverage on a claims-made basis:

The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

A copy of the claims reporting requirements must be submitted to the Town for review.

Exhibit D

Anti-Lobbying Certification

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

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

Signature

8/10/21

Date

Exhibit E

CDBG-DR Program Terms and Conditions

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

This Agreement is effective upon approval by the Town Council.

A. The Consultant cannot incur any costs until the execution of the contract unless prior written approval has been given by CDBG-DR management.

B. For certain activities, the Consultant must receive the Authority to Use Grant Funds from HCD prior to the commitment and/or commencement of Work.

C. A Consultant cannot be reimbursed for any costs until the HCD has issued written clearance of all general conditions requirements.

2. **Sufficiency of Funds and Termination**

A. The Department may terminate this Agreement at any time for cause by giving at least fifteen (15) days written notice to the Consultant. Cause shall consist of violations of any terms and/or special conditions of this Agreement, upon the request of HUD, or withdrawal of the Department's expenditure authority.

B. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays which would occur if this Agreement were executed after the determination was made.

C. This Agreement is valid and enforceable only if sufficient current funds are made available to the Department by the United States Government for the Federal Fiscal Year. In addition, this Agreement is subject to any additional restrictions, limitations, conditions or statute enacted by the Congress or State Legislature, which may affect the provisions, terms or funding of this Agreement in any manner.

D. If Congress does not appropriate sufficient funds for the program, the Department may amend this Agreement to reflect any reduction in funds, or it may terminate this Agreement by giving fourteen (14) days written notice to the Consultant.

3. **Termination for Convenience and Enforcement**

A. Except as provided in CFR 200, awards may be terminated in whole or in part only as follows:

1) The Department with the consent of the Consultant or Subgrantee in which case the two parties shall agree upon termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
2) By the Consultant or Subgrantee upon written notification to the Department, setting forth the reasons for such termination, the effective date, and in the case

of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the Department determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either CFR 200 or paragraph (A) of this Section.

B. Enforcement for noncompliance may include the following remedies if a Consultant or Subgrantee materially fails to comply with any term of an award, whether stated in a federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the Department may take one or more of the following actions, as appropriate in the circumstances.

1) Temporarily withhold cash payments pending correction of the deficiency by the Grantee or Subgrantee or more severe enforcement action by the awarding agency.

2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.

3) Wholly or partly suspend or terminate the current award for the Consultant's or Subgrantee's program.

4) Withhold further awards for the program.

5) Take other remedies that may be legally available.

a. Hearings, appeals. In taking an enforcement action, the awarding agency will provide the Consultant or Subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the consultant or Subgrantee is entitled under any statute or regulation applicable to the action involved.

b. Effects of suspension and termination. Costs of Grantee or Subgrantee resulting from obligations incurred by the Consultant or Subgrantee during a suspension or after termination of an award are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other Consultant or Subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowed if:

1. The costs resulting from obligations which were properly incurred by the Consultant or Subgrantee before the effective date of suspension or termination, are not in anticipation of suspension or termination; and, in the case of a termination, are noncancelable, and,

2. The costs would be allowable if the award was not suspended or expired normally at the end of the funding period in which the termination takes place.

c. Relationship to debarment and suspension. The enforcement remedies identified in this Section, including suspension and termination, do not preclude a Consultant or Subgrantee from being subject to 2 CFR part 2424. CDBG funds may not be provided to excluded or disqualified persons per 24 CFR 570.489(i).

4. **Litigation**

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

B. The Consultant shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

5. **National Objectives**

All grant activities performed under this Agreement must be eligible and must meet one of the National Objectives of the HUD regulations as included in the Application authorized under Title I of the Housing and Community Development Act of 1974 Section 104(b)(3), as amended and 24 CFR Part 570.483.

A. Primarily Benefits HUD defined low- or moderate-income person(s) (LMI) or household(s) (LMH). The term low- or moderate-income limits are defined as being no more than 80% of the median area income, annually determined by HUD, per 24 CFR, Part 570.483(b); and/or,

B. Elimination of Slums or Blight (on a spot or area basis) is an eligible CDBG National Objective. Slums and Blight's definition is found in 24 CFR, Part 570.483(c). The use of Slums or Blight requires prior Departmental written approval.

C. Meeting an Urgent Need is an eligible CDBG National Objective under 24 CFR, Part 570.483(d). This National Objective can only be used after formal release of public notice from the Department announcing the disaster event and requesting grantees impacted by the disaster to submit proposals by grantees describing how this National Objective is being met by eligible activities under this Agreement.

6. **Waivers**

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

7. **Uniform Administrative Requirements**

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines and requirements of CFR 200 which includes OMB Circulars A-87, A-110 (implemented at 24 CFR part 84), A-122, A-133 (implemented at 24 CFR part 45), and A-128 (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of federal funds under this part.

8. **Non-Performance**

In the event that the National Objective and/or Public Benefit requirements are not met, the Department may, in its sole discretion, impose any or all of the following remedies: recapture of part or all of any PI; reimbursement of part or all of the grant amount; and/or exclusion of the Consultant from further CDBG funding for a period of time to be determined by the Department.

Prior to closing out this Agreement, the Department shall review the actual National Objective and/or Public Benefit achievements of the Consultant or Sub-grantee if applicable.

9. **Affirmatively Furthering Fair Housing**

The Consultant or Sub-grantee will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

10. **Equal Opportunity Requirements and Responsibilities**

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

B. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes fair housing.

C. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.

D. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.

E. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for person's age

55 or older.

F. **The Housing for Older Persons Act of 1995 (HOPA)**: Retained the requirement that housing facilities must have one person who is 55 years of age or older living in at least 80% of its occupied units. The act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 or older.

G. **The Age Discrimination Act of 1975**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7.

H **Section 503 of the Rehabilitation Act of 1973**: This law prohibits federal contractors and subcontractors from discriminating in employment against individuals with disabilities and requires employers take affirmative action to recruit, hire, promote, and retain these individuals.

I **Section 504 of the Rehabilitation Act of 1973**: It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.

J. **The Americans with Disabilities Act of 1990 (ADA)**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

K. **Executive Order 11063**: This Executive Order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.

L. **Executive Order 11259**: This Executive Order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.

M. **The Equal Employment Opportunity Act**: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC.

It also brings federal, state, and local governments under the Civil Rights Act of 1964.

N. **The Immigration Reform and Control Act (IRCA) of 1986**: Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).

O. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978**: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.

P. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.

Q. **Executive Order 11246**: This Executive Order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

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

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

Section 3 Clause

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR. Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

Facilitating the training and employment of Section 3 workers and the award of contracts to Section 3 business concerns by undertaking activities such as described in Section 75.25(b), as appropriate, to reach the goals set forth in Section 75.23 and in Federal Register Vol. 85, No. 189, page 60909, until superseded by HUD in a subsequent publication. As of September 29, 2020, the minimum Section 3 benchmark is 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 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.

12. Environmental Compliance

The Consultant shall have satisfied all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements. CEQA shall be approved by the Consultant. The level of compliance varies by activity. NEPA review must be completed by the Consultant for each activity and approved in writing by Department staff prior to incurring costs for the grant activity(ies).

Solid Waste Disposal Act: Consultants and Sub-grantees must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines

13. Clean Air and Water Acts

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

14. Relocation, Displacement, and Acquisition

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

15. Compliance with State and Federal Laws and Regulations

A. The Consultant or Sub-grantee agrees to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Sub-grantees, Consultants or subcontractors, and the grant activity, as well as any other State provisions as set forth in Exhibit C.

B. The Consultant or Sub-grantee agrees to comply with all federal laws and regulations applicable to the CDBG-NDR Program and grant activity(ies), and with any other federal provisions as set forth.

16. Federal Labor Standards Provisions

A. Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over $2,000.

B. "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) The Act prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The Act also provides that the inclusion of kickback amounts in contract prices are prohibited conduct in itself. This Act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.

C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that worker receive "overtime" compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

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

The Consultant or Sub-grantee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

17. Prevailing Wages

A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Consultant or Sub-grantee shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [California Labor Code Section 1720-1743] (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

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

18. Lead Based Paint Hazards

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

19. Conflict of Interest of Members, Officers, or Employees of Consultants, Members of

Local Governing Body, or other Public Officials

Pursuant to 24 CFR 570.489(h), no member, officer, or employee of the Consultant or Sub-grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for one (1) year thereafter. The Consultant or Sub-grantee shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

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

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the Federal contract.

21. **Anti-Job Pirating Certification**

Pursuant to 24 CFR 570.482(h) CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area to another labor market area if the relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs. Job loss of more than 500 employees is always considered significant. Job loss of 25 or fewer positions is never considered significant.

22. **Anti-Lobbying Certification**

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

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

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

23. Bonus or Commission, Prohibition Against Payments of

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

A. Obtaining the Department's approval of the Application for such assistance; or,

B. The Department's approval of the Application for additional assistance; or,

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

24. Contractors and Subrecipients

A The sub-grantee shall not enter into any agreement, written or oral, with any Contractor or subrecipient without the prior determination that the Contractor or subrecipient is eligible to receive CDBG funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Consultants.

1) Contractors are defined as program operators or construction contractors who are procured competitively.

2) Subrecipients are defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive CDBG funds from an awarded jurisdiction to undertake eligible activities.

B. An agreement between the Consultant or Sub-grantee and any contractor or subrecipient (as applicable) shall require:

1) Compliance with the applicable State and Federal requirements described in this Agreement, which pertain to, among other things, labor standards, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace; and, Compliance with the applicable provisions relating to Labor Standards/Prevailing Wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.

2) Maintenance of at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the grant activity(ies) or any part of it.

3) Maintenance, if so required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor,

or any subcontractor in performing the grant activity(ies) or any part of it.

4) Compliance with the applicable Equal Opportunity Requirements described herein Exhibit E and in Section 31 of this Agreement.

C. Consultants shall:

1) Perform the grant activity(ies) in accordance with federal, State and local housing and building codes, as are applicable.

2) Provide security to assure completion of the project by furnishing the borrower and construction lenders with Performance and Payment Bonds, or other security approved in advance in writing by the Department.

D. Subrecipients shall:

1) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a minimum period of five (5) years after the Department notifies the Consultant or Sub-grantee that the HUD/HCD contract has been closed.

2) Permit the State, federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

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

All organizations covered by the Drug-Free Workplace Act of 1988 are required to provide a drug-free workplace by taking the following steps:

1) Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.

2) Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.

3) Notify employees that as a condition of employment on a federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within (5) five calendar days, if he or she is convicted of a criminal drug violation in the workplace.

4) Notify the contracting or granting agency within 10 (ten) days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.

5) Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.

6) Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

25. Insurance

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

26. Periodic Reporting Requirements

During the term of this Agreement, the Consultant or Sub-grantee must submit the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. The Consultant or Sub-grantee performance under this Agreement will be based in part on whether it has submitted the reports on a timely basis. These reports include but are not limited to the following:

A. Annual Performance Report (APR): Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.

B. Annual Section 3 Reports: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.

C. Annual Minority Owned Business/Women Owned Business (MBE/WBE) Report: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.

D. Wage Compliance Reports: Semi-annual Wage Compliance Reports are to be submitted by October 7 and April 7 during the entire construction period. The final Wage Compliance Report is to be submitted thirty (30) days after construction is completed.

The Department reserves the right to request any other reports that may be necessary for the implementation of this Agreement.

27. Monitoring Requirements

The Department shall perform a program and/or fiscal monitoring of the grant. The Consultant or Sub-grantee shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. If findings are not adequately resolved in a timely manner, the Department may deduct points from the Consultant or Sub-grantee's performance score on future solicitations or applications for funding.

In determining appropriate monitoring for each grant, the Department shall consider prior grant administration, audit findings, as well as factors such as complexity of the project and the amount of funding. The Department shall determine the areas to be monitored, the number of monitoring visits, and their frequency. The monitoring will address program compliance with contract provisions, including to but not limited to national objective, financial management, the requirements of HCDA. 24 CFR Part 85, 24 CFR 570 Part I, and all applicable federal overlay requirements.

28. Inspections of Grant Activity

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

A. The Department shall inspect any grant activity performed by contractors and subrecipients hereunder to ensure that the grant activity(ies) is being and/or has been performed in accordance with the applicable federal, State and/or local requirements and this Agreement.

B. The Department agrees to require that all grant activity(ies) found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to its contractor, subcontractor, or sub-recipient, respectively, until it is so corrected.

29. Access

Access by the Department, the Subgrantee, the federal grantor agency, the State, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions pursuant to 24 CFR 85.36(i)(10).

30. Audit/Retention and Inspection of Records

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

B. The Consultant or Sub-grantee agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Consultant or Sub-grantee agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. The

Consultant or Sub-grantee further agrees to maintain such records for a minimum period of five (5) years after the Department notifies the Consultant or Sub-grantee that the HUD/HCD contract has been closed. The Grantee shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.

C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Consultant or Sub-grantee. Expenditures for grant activity(ies) not described in Exhibit A shall be deemed authorized if the performance of such grant activity(ies) is approved in writing by the Department prior to the commencement of such grant
activity(ies).

D. Absent fraud or mistake on the part of the Department, the determination by the Department of the allowance of any expenditure shall be final.

E. For the purposes of annual audits under 2 CFR 200 Subpart F-Audit Requirements Consultant or Sub-grantee, Grantee shall use the Federal Catalog number 14.228 for the State CDBG Program.

F. Pursuant to 2 CFR Subpart F-Audit Requirements, the Consultant or Sub-grantee shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. Audit costs for this Agreement are general administration expenses and are subject to the general administration expenditure limits associated with this Agreement. The costs of the CDBG-NDR related portion of the audit may be charged to the Program in accordance with 2 CFR Subpart F-Audit Requirements and Section 7122 of Title 25 CCR.

G. Notwithstanding the foregoing, the Department will not reimburse the Consultant or Sub-grantee for any audit cost incurred after the expenditure deadline of this Agreement.

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

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

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

4) If so directed by the Department upon termination of this Agreement, the Consultant or Sub-grantee shall cause all records, accounts, documentation and

all other materials relevant to the grant activity(ies) to be delivered to the Department as depository.

31. **Signs**

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

32. **Citizen Participation**

The Consultant or Sub-grantee is subject to the requirements concerning citizen participation contained in Federal Regulations at 24 CFR, Part 570.486, Local Government Requirements, Part 91.105
and 91.115.

33. **Flood Disaster Protection**

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

B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said Act.

C. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by FEMA as having special flood areas and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.

D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

34. **Procurement**

The Consultant or Sub-grantee shall comply with the procurement provisions in 2 CFR 200.318-326 Federal Procurement Standards.

35. Obligations of Grantee with Respect to Certain Third Party Relationships

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

36. Energy Policy and Conservation Act

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

37. Debarment, Suspension, and Ineligibility

The contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

38. Political Activity

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