



CITY OF BIGGS Planning Staff Report

TO: CITY OF BIGGS CITY COUNCIL

FROM: Scott Friend, AICP – City Planner

MEETING DATE: March 8, 2016; 6:30 p.m.
Biggs City Hall, 3016 Sixth Street, Biggs, CA 95917

SUBJECT: City Council Resolution 2016-02 : Adoption of a Resolution Approving and Directing the Submittal of the 2015 Community Development Block Grant Program Income Re-Use Plan to the State Department of Housing and Community Development (HCD).

RECOMMENDATION:

Adopt the proposed resolution to approve the signing and submittal of the State Department of Housing and Community Development (HCD) template Community Development Block Grant (CDBG) Program Income Re-Use Plan. Designate signing authority to the City Administrator to execute the Re-Use Plan and applicable CDBG program income reporting documentation.

EXECUTIVE SUMMARY:

In June of 2014 HCD released a memo (Attachment 1) addressed to all recipients of past and current CDBG State funds. The memo stated that the statutorily required Program Income Re-Use Plans approved by HCD prior to the memo had been found deficient by the Federal Department of Housing and Urban Development (HUD) and that all recipients were required to adopt new plans based on HCD's HUD approved template. The memo was not widely circulated, and many recipients missed the initial call to adopt new re-use plans. As per the requirements of the State of California Housing and Community Development Department (HCD) and the Federal HUD guidelines, the City of Biggs needs to have an HCD approved Program Income Re-use Plan in place in order to program any of the monies (i.e. program income) currently in the City's CDBG program income fund. Approval of the attached Resolution (Attachment 2) would allow the City Administrator to execute the HCD's 2015 Program Income Re-Use Plan and submit it to HCD for approval. It would ensure the City is current with CDBG requirements and has the ability to plan for, and use, current and future use of CDBG program income funds.

DISCUSSION:

The City of Biggs has been collecting Program Income from revolving loans made with Community Development Block Grant (CDBG) funds awarded by the State of California's Housing and Community Development (HCD) department. These revolving loans included both economic development loans to local businesses; housing rehabilitation loans to low- and moderate-income homeowners that were intended to encourage economic development and improve the housing stock available to low- and moderate-income homeowners; and, loans to help lower-income owners stay in their homes. As these loans mature, they are repaid, along with any applicable interest, into a special CDBG program income fund. This fund is established as a "stand-alone" fund to ease the task of

keeping track of repaid CDBG monies. Twice yearly, the City is required to report current balance and collected funds amounts for that semi-annual period to HCD. Once the funds exceed a certain amount, the City is expected to re-use the funds in a CDBG eligible program or project. In order to establish a CDBG eligible program or project, the City needs to have a City Council approved Program-Income Re-Use Plan on record with HCD.

HCD uses form or template Program Income Re-Use Plans that set default uses for CDBG program income. These default uses include either Housing rehabilitation loans or Economic Development loans. In order to use CDBG funds for a separate, but ultimately eligible project or program, the City must have a HCD approved re-use plan, must be current with their CDBG program income reports, and have a program income waiver for the new project. The City of Biggs' previous program income reuse plan was based upon an HCD template.

In 2014 the Federal Department of Housing and Urban Development (HUD), who provides the State with CDBG funds to grant to local jurisdictions, reviewed HCD's template Program Income Re-Use Plan, and found it deficient. HCD prepared a new Program Income Re-Use Plan template, according to HUD's requirements and, following a memo that described the changes and the new process (Attachment 1) released the template for jurisdictions with past or current State issued CDBG grants to use to update their program income plans.

The memo was missed by many jurisdictions, including those who had recently adopted new Program Income Re-Use Plans (such as Biggs) based on changes made to the template in December of 2012. However, the new 2014 template rendered all prior program income re-use plans void, and jurisdictions who have not submitted a new plan on the new template are at risk of losing their CDBG program income funds to recapture by HCD (including Biggs).

In order to get the City of Biggs current with HCD and HUD's program income requirements, the attached Resolution authorizes the City Administrator to sign and submit the current Program Income Re-Use Plan template to HCD for final approval. It also authorizes the City Administrator to execute and approve any other reporting or documentation requirements to get the City's program income accounting current with HCD.

ENVIRONMENTAL REVIEW

Environmental review is not required for this action.

FISCAL IMPACT

There is a zero net cost to the City to execute and submit the Program Income Re-Use Plan. Future planning and administration efforts are eligible as part of the CDBG program income and recaptured grant funds currently on account. CDBG allows up to 17% of the total available funds to be used in grant administration, including planning, outreach, reporting, and consulting services. The City currently has approximately \$50,000 in program income funds that can potentially be used to fund a new CDBG eligible project.

RECOMMENDATION

Staff recommends that the City Council adopt Resolution #2016-02, authorizing and directing the City Administrator to submit a revised Program Income Re-Use Plan to the State HCD on behalf of the City of Biggs.

ATTACHMENT(S):

- HCD June 16, 2014 CDBG Management Memorandum
- Resolution CC 2016-XX
- CDBG Program Income Re-Use Plan

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FINANCIAL ASSISTANCE
Community Development Block Grant Program

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CDBG MANAGEMENT MEMORANDUM
Community Development Block Grant Program - Memorandum Number 14-05

June 16, 2014

MEMORANDUM FOR: Non-Entitlement Jurisdictions Eligible for the State Community Development Block Grant (CDBG) Program

FROM: Thomas Brandeberry, CDBG Section Chief

SUBJECT: Program Income (PI) Rule Changes

This Management Memo (Memo) supersedes the following Program Income Memos: 10-03, 11-04 and 12-03. However, Memo 14-02 is still applicable.

Note: *The applicability of this memo also includes cities and counties that have gained entitlement status and cities within urban county agreements which have elected to continue to report their State CDBG PI to the State. See, "Jurisdictions Leaving or Entering the State CDBG Program with Program Income," page 11, for specific requirements/limitations.*

REGULATORY/STATUTE CITATIONS

- Section 104(j) Housing and Community Development Act (HCDA)
- §570.489 (e) Program Income
- §570.489 (f) Revolving funds

Introduction

This Memo outlines changes, **effective July 1, 2014**, to PI and RLA policies in the State CDBG Program.

Based on direction from HUD and technical assistance from HUD contractors, the Department has determined the State's present rules on Program Income (PI) and Revolving Loan Accounts (RLA) are out of compliance with CDBG federal statute and regulations. Policy and procedure changes must be made to resolve existing programmatic compliance issues related to the CDBG Final Rule (effective May, 2012), and with the State's current PI/RLA rules.

The changes that are necessary for the Department to operate in compliance are significant and range from changes in policy, to fully restructuring CDBG PI accounting and reporting

practices at both the State and local levels. These changes will impact all of our grantees in varying degrees, grantee with large PI balances most significantly.

For this reason, the Department completed six Roundtable meetings and two Advisory Committee meetings which: 1) discussed the significance of the changes; 2) gathered feedback on corrective options, and; 3) discussed how the options may be implemented so the HUD required Department policy can be formulated. The Department has also been in extensive consultation with HUD and HUD TA providers to ensure the policy will be in compliance and to make certain our grantees have the best available options to continue to complete valuable CDBG activities with their CDBG PI and RLA funds.

HUD understands the Department has a very large task to complete and that we cannot create the PI policy retroactively. Therefore, any changes in policies and procedures herein will have a **July 1, 2014 effective date**.

NOTE: The most significant rule change, effective July 1, 2014, is:

- ***Funds on-hand determined to be PI must be used prior to drawing down any awarded grant funds.***

Also Note: Based on the CDBG federal Final Rule change, all PI/RLF expenditures, along with activity accomplishments, must be entered into the Integrated Disbursements & Information System (IDIS) beginning July 1, 2011.

NEW POLICY - Revolving Loan Fund

REVOLVING LOAN FUND - HUD uses the term Revolving Loan *Fund* (RLF), not Revolving Loan *Account* (RLA), (which is a State term). The Department, to distinguish between past practices and those implemented with this Management Memo, effective July 1, 2014, is now using the HUD term "RLF."

As of July 1, 2014, all State RLAs are cancelled since HUD has determined the State's RLAs do not meet the RLF definition. This means that until a grantee follows the steps to create an eligible RLF outlined below *and receives the Department's approval for the RLF*, ***all funds on hand and within the grantee's loan portfolio are considered PI*** and, therefore, must be used prior to drawing down grant funds from any CDBG contracts.

REVOLVING LOAN FUNDS:

Grantees have the option to establish RLFs under these two RLF definitions only:

1. **Housing RLF:** Activities are limited to Homebuyer Assistance (13), Owner Occupied Rehab (14A), and Tenant Occupied Rehab (14B), and are limited to 1-4 Units. (Multi-family activities, or those with 5 or more units, are *not* considered part of the Housing RLF activities.)

2. **Economic Development RLF:** Activities are limited to Microenterprise Financial Assistance (18C) (no grants), and Business Assistance (18A) (limited to Special ED).

The above defined RLFs will allow grantees the maximum number of activities to capitalize the RLF and ensure the RFL will have sufficient funds to revolve.

RLF RULES:

- a. RLFs can only use financing instruments that revolve. Therefore, RLFs cannot fund **projects** that are **solely** grants or forgivable loans.
- b. A grantee cannot establish a RLF unless:
 - 1) the grantee has made loans in the past for the same RLF activity; **and**,
 - 2) the grantee has received loan payments from the same RLF activity.
- c. Funds within a RLF can only be from activities defined by the RLF, as listed above. This means RLF monies must go out in loans and come back as payments for the same RLF activity. Funds received for RLF activities cannot be “diverted.”
- d. Once a RLF has been established and approved by the Department, no funds can be used for any other CDBG activity, committed to any contract to supplement a grant funded project, or transferred to another RLF(except as noted below).
- e. Moving funds out of an RLF requires Department approval and will only be allowed under limited circumstances (for a natural disaster, for example). Once approved, the funds will be considered PI; and, therefore, must be used prior to drawing down grant funds. Additionally, this action could result in the Department cancelling the grantee’s RLF due to a lack of ability to revolve (insufficient funding).
- f. When calculating the 17% General Admin (21A) funds on the received PI in a given year, funds received for an RLF may not be included in this calculation.
- g. Associated Activity Delivery (AD) costs can only be reported and included in the definition of “revolving” when actual accomplishments are reported within the fiscal year. This means no AD may be charged to the RLF within a fiscal year if no loans were made within that fiscal year.
- h. When a grantee has been approved for an RLF, those funds must be placed within a separate set of accounts (grantee will be required to create a separate fund/ transaction number) for each approved RLF. *This will also require all other CDBG funds received from CDBG activities be accounted for as PI.*
- i. If a grantee has awarded grant funds for the same activity as their approved RLF and there are insufficient RLF monies to fund an entire activity, the grantee can “split-fund” a project (RLF funds first) when the project needs additional funds beyond the amount of RLF monies on-hand.

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- j. *Projects funded solely with grants are not considered RLF and, therefore, can be funded with awarded grant funds. To qualify as an RLF eligible activity, there must be the possibility of repayment, so only deferred loans and performing loans are eligible.*
 - k. Grantees cannot “bank” RLF monies. To remain eligible, a RLF must revolve. Thus, a grantee cannot have more than \$100,000 on hand in a RLF within a given fiscal year, without making at least one loan. Additionally, grantees may not have more than \$500,000 on hand even if making loans, each fiscal year. The Department will address these issues by issuing finding letters to the grantee which could result in the Department cancelling the grantee’s RLF, which immediately converts the funds to PI; and, therefore, must be used prior to drawing down grant funds.

Note: The Department reserves the right to cancel the grantee’s RLF and require the funds to be returned to the Department as a corrective action for significant, ongoing non-compliance with RLF rules.

STEPS: MOVING FROM RLA TO RLF

As of July 1, 2014, grantees do not have Revolving Loan Funds until the following has been completed. Thus, as of July 1, 2014, all funds on hand are considered PI and must be used prior to drawing down any grant funds.

As of July 1, 2014, the following steps must be followed to establish an RLF:

1. Grantee must decide if they wish to create one or both of the RLFs as replacement for their present RLAs. If not, the grantee must begin the new process of accounting for all current RLA funds and PI on hand as PI.
2. If the grantee decides to create one or both of the RLFs, they must:
 - a. Certify the amount of funds currently on hand which are from the same activity that the grantee wishes to fund each RLF;
 - b. Certify the amount of funds in their loan portfolio which have come from the same activity and will continue within the RLF when payments are received; and,
 - c. Certify the amount of funds, both on hand and within the loan portfolio, which are not from the same activity. This includes funds on hand, funds within the RLA, or funds within the loan portfolio where the grantee cannot identify the activity that generated the funds; these funds will be considered PI and must be accounted for as such.
3. The grantee must have approved guidelines for each activity within the RLF, as listed below. These RLFs are consistent with the CDBG Program’s “Combo” Activities:

Housing RLF:

- Owner Occupied Rehabilitation
- Tenant Occupied Rehabilitation (if allowed in the grantee’s program)

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- Homebuyer Assistance

Economic Development RLF:

- Microenterprise Financial Assistance
- Special Economic Development Business Assistance

Note: Once the grantee has identified portfolio loans as being within an RLF, the loans must be individually coded to indicate they are part of the RLF, which will ensure any payments are correctly accounted for and reported into the RLF.

4. Complete all needed Board Resolutions and Citizen Participation requirements.

Note: Certification must be made, in writing on the grantee's letterhead, be signed by the Authorized Representative, and must be submitted to the Department with all supporting documentation.

5. The Department will provide a written decision on the RLF request. Until grantees receive the Department's written approval, the RLF does not exist and all CDBG revenue is considered PI and must be spent prior to requesting a draw of grant funds.

NEW POLICY - Program Income When the Grantee has an Active Contract

For the purpose of this section, an Active Contract means the grantee has an executed Standard Agreement (contract) for CDBG activities and the expenditure deadline has not passed.

ANNUAL PROGRAM INCOME RECEIVED THAT IS LESS THAN \$35,000

In May 2012 the CDBG federal Final Rule changed this amount from \$25,000 on all funds received by the grantee to \$35,000, *but clarified that it only applies to PI*. Any RLF funds must stay RLF and cannot be included in the \$35,000 calculation. The \$35,000 rule is found in the CDBG federal regulations defining when proceeds received from a CDBG activity are *not* considered PI. The \$35,000 is based on a fiscal year and since it applies only to PI, the rule now requires that grantees certify at the beginning of each fiscal year whether or not they intend to utilize the \$35,000 rule.

If a grantee does intend to use the \$35,000 rule, they must:

- a. When requesting grant funds, certify the amount of PI on hand that have been received during that fiscal year;
- b. Not expend any of these funds until the fiscal year is over, unless they received greater than \$35,000, at which point the grantee must expend the PI first prior to requesting any grant funds Use all PI carried over from the prior year;
- c. Use the PI once the amount of PI received reaches \$35,000 within the fiscal year; and,

- d. Have adequate accounting records to verify, to the Department's satisfaction, they received less than \$35,000 in CDBG PI in a given fiscal year. This must be reported on the semi-annual PI Reports.

If a grantee does not intend to use the \$35,000 rule, all revenue received (even if under the \$35,000 limit) is CDBG PI and must be used prior to requesting any grant funds.

Revised Funds Request forms are necessary to document the grantee's certification regarding the \$35,000 rule. Therefore, the Department will be releasing the Revised Funds Request forms under a separate Memo.

PI RETURNED TO THE STATE

Jurisdictions that have PI on hand and have not applied for or been awarded CDBG funds with the past three NOFAs will be required to submit a PI Expenditure Plan for their PI on hand. The plan must be submitted via the CDBG PI Waiver process, and if they do not initiate the request, the Department will send the grantee a letter requiring submission within a set time frame. If the grantee does not respond to the Department's letter, the grantee will be required to return all PI on hand to the Department, regardless of the amount of PI.

NEW PI RULES – *(PI Revenue; not revenue from an approved RLF)*

1. Program Income must be used prior to requesting a draw of grant funds from any contract. For example, if a grantee incurs costs on a grant funded project *and* has PI on hand, the PI must be used first and the grantee cannot request grant funds until all PI has been paid out.
2. Grantees cannot "commit" (or set aside) PI to an active contract; PI funding must be applied to the next CDBG cost to be paid.
3. PI Waiver projects (set aside PI funds) can only be approved if there is no active contract.
4. If the revenue cannot be associated with an approved, defined RLF, the funds will be considered PI and, therefore, must be used first.

STEPS: ACTIVE 2012 OR 2013 CONTRACTS

Approving PI waivers when a grantee has an active contract is out of compliance with CDBG federal regulations because PI Waivers are funded with PI and PI must be spent first.

As of July 1st, the Department will allow grantees to amend their current active contracts to add "Supplemental Activities." This will allow awarded grant funds that have been supplanted by PI to be used for programs and projects identified by the grantee. Since the

requirement of using PI first will likely result in contract funds being “left over” in the contract, “left over” funding will roll to the grantee’s Supplemental Activities, allowing the grantee an opportunity to complete additional CDBG eligible activities so that they do not lose the awarded funds due to having PI.

To initiate Supplemental Activities

- a. The grantee must complete and submit to the Department a “Supplemental Activity Inquiry Form,” signed by the Authorized Representative, along with any necessary supporting documentation.
- b. The Department will review the Supplemental Activity Inquiry Form for eligibility and meeting National Objective.
- c. If approved, the grantee will be required to complete the citizen participation process and submit a final resolution approving:
 - 1) the submission of the PI Supplemental Activity(ies); and,
 - 2) the amending of the grantee’s contract.
- d. Any approved waiver activities that have not been fully expended by July 1, 2014 must be added as “Supplemental Activities” through a contract amendment.

2014 CONTRACTS

Once a jurisdiction receives an award letter, the above steps must be taken to add any Supplemental Activities and/or existing waiver projects that have not been fully expended and are not identified as being added to an active 2012 or 2013 contract.

STEPS: FOR 2015 CONTRACTS

When a jurisdiction applies for funding under the 2015 CDBG NOFA, “Supplemental Activities” will be identified in the application if the jurisdiction wishes to have grant funds (if awarded) available to complete activities that would have been funded with PI . Including these activities in the contract will allow grant funds (if awarded) to roll to the Supplemental Activities, since if a jurisdiction has any PI on hand it must be used to complete the active contract activities before grant funds can be drawn. The amount of grant funds equal to the PI paid funds can be rolled into funding the Supplemental Activities. The 2015 NOFA will include the steps necessary to add “Supplemental Activities” to the application.

From 2015 and forward, PI waivers will not be added to active contracts. This means any PI waiver projects must be completed prior to drawing down grant funds since waivers are funded by PI, and PI must be expended first.

NEW POLICY - Program Income When the Grantee Does Not Have an Active Contract

When a jurisdiction does not have an active contract, the PI Waiver process will remain as it is. However, if a jurisdiction has an open PI Waiver and is awarded a contract, going forward after the CDBG 2015 NOFA, the PI Waiver will need to be completed **prior to** drawing down grant funds.

However, grantees must have an approved Reuse Plan to expend PI and/or RLF monies if the grantee has no active CDBG contract.

NEW POLICY – Additional Considerations

Note: The Department reserves the right, for any significant on-going non-compliance with RLF and/or Program Income rules, to cancel any RLFs and require the funds, both RLF and PI, to be returned to the Department.

GENERAL ADMINISTRATION (GA)

As of July 1, 2014:

Grantee can carry forward the GA balance from Fiscal Year PI Report covering Fiscal Year 2013-2014. The balance forwarded will be used to determine the **maximum available GA** funding cap in the next step below.

For PI funds received after July 1, 2014, grantees may calculate 17% of PI received (again, excluding RLF monies). This amount can be added to the amount on hand as of July 1, 2014 and will be considered as part of the **maximum available GA** funding cap.

No Active Contract

The grantee can expend the funds calculated above, with an approved Reuse Plan, up to the established **maximum available GA** funding cap, and may roll over this amount between fiscal years.

Active Contract

While grantees can continue to have a **maximum available GA** funding cap balance, they will not be able to “set-a-side” the funds as GA since PI must be used first. So that the grantee doesn’t lose this calculated GA, the Department will increase the grant GA when PI Waivers (being added to 2012-2014 contracts) and Supplemental Activities are approved.

While the grantee may continue to maintain a **maximum available GA** funding cap with active contracts, these funds may not be set aside to remain on hand given that all PI must be spent first.

Note: Planning (PTA) Studies cannot be funded with PI GA, Supplemental Activities or Waivers, because Planning and Technical Assistance (PTA) funding is included in the federal 20% Administration Cap and must meet a National Objective to be eligible. Thus, PTA studies can only be done through an awarded contract.

AGREEMENTS BETWEEN THE STATE AND THE GRANTEE

Per the CDBG Final Rule, no funds (PI, RLF or grant funds) may be spent unless an agreement (contract) has been established and executed. All PI Reuse Plans, effective immediately, must be voided since they are not in compliance with HUD PI and RLF rules. The following actions are being implemented to permit the expenditure of PI and RLF monies.

- For grantees amending 2012 and 2013 contracts: with the addition of Waivers and/or Supplemental Activities, all PI and RLF rules and requirements will be added to the contract during the amendment process.
- For 2014 Contract and forward: all PI and RLF rules and requirements will be included prior to contract execution.
- For jurisdictions with no Active Contracts: the Department will make available an updated PI Reuse Plan by July 30, 2014, which must be fully executed in order to spend any PI or RLF monies outside of an Active Contract.

CITIZEN PARTICIPATION

Federal regulations require grantees to address all projected activities for the upcoming NOFA application submission during the pre-submission Public Hearing. This includes all grant funded activities and PI/RLF activities and expenditures. All Public Notices and Agendas for the hearings must include PI and RLF proposed activities and expenditures, in addition to all proposed grant and Supplemental activities.

- For active 2012, 13 and 14 contracts where Waivers and Supplemental Activities will be added/included, a separate Public Hearing must be held for the projected activities and expenditures being added to the contract, and documentation of such must be submitted to the Department to complete the contract amendment process.
- Beginning with the 2015 NOFA and going forward, the pre-application submission Public Hearing must include all proposed activities and expenditures including grant funded activities, PI and RLF activities, and Supplemental Activities.

PROGRAM INCOME REPORTING

For fiscal 2013/14, the current PI Report Form, along with Grant Performance Reports (GPR) must be used. The reporting changes reflected in this memo will begin concurrent with the 2014/15 fiscal year.

The current PI Report Form will be used to close out this fiscal year (2013/14), along with a GPR that reports the PI/RLF accomplishments.

Beginning with fiscal 2014/15 new Setup/Completion Reports will be incorporated into the PI/RLF and Grant reporting requirements, as well as into the 2014 Standard Agreement. A Management Memo will be released separately on this subject in the near future.

All of the above will be will be addressed in trainings.

NEW POLICY – Jurisdictions Leaving or Entering the State CDBG Program with Program Income

Pursuant to 24 CFR 570.489(e)(3)(iii) and (iv) the Department is implementing the following policy and procedures for jurisdictions that have State CDBG PI.

24 CFR 570.489(e)(3)(iii) Transfer of program income to Entitlement program.

Jurisdictions that are entitlement communities or part of an urban agreement, or grantees that at a later date become an entitlement community or join a urban agreement, have the following options for PI and RLFs:

PI not associated with a RLF, the jurisdiction must:

1. Complete the process to certify they will be reporting the State PI into the Entitlement Programs process, including receipting the CDBG proceeds into IDIS, or,
2. Return all State CDBG Program Income to the Department, the amounts on hand as of July 1, 2014 and as it is received until all PI generated by State CDBG funding has been returned.

PI in an approved RLF:

Entitlement jurisdictions and those who are part of an urban agreement may keep their RLF(s) and monies within an RLF as long as the following is met:

1. They have a State Reuse Plan (agreement) signed by the Department and the City/County Authorized Representative.
2. Agree to immediately implement the RLF rules within this Memo and execute updated the Reuse Plan, as provided by the Department.

Note: the above must be complete prior to October 31, 2014 or all funds on-hand and within the loan portfolio that is from State CDBG activities will be consider PI and must be returned to the Department.

24 CFR 570.489(e)(3) (iv) *Transfer of program income of grantees losing Entitlement status.*

Upon entry into the State CDBG program, a unit of general local government that has lost or relinquished its Entitlement status must submit a letter to the department, signed by the Authorized Representative stating which of the following options the jurisdiction will be implementing. Keep in mind, that retaining Entitlement PI while participating in the State CDBG program will require PI reporting for both sets of funding. Entitlement PI and any PI generated by State CDBG fund cannot be comingled.

Within 90 days of leaving the Entitlement Program to join the State CDBG program, the jurisdiction must certify that it will either:

1. Retain program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income, including reporting it into IDIS or the urban county; or
2. Retain the program income and transfer it to the State CDBG program, in which case the jurisdiction must comply with the State's rules for PI and RLF address within this Memo, the Reuse Plan and Chapter 14 of the Grant Management Memo.

Establishing a RLF Decision Flow

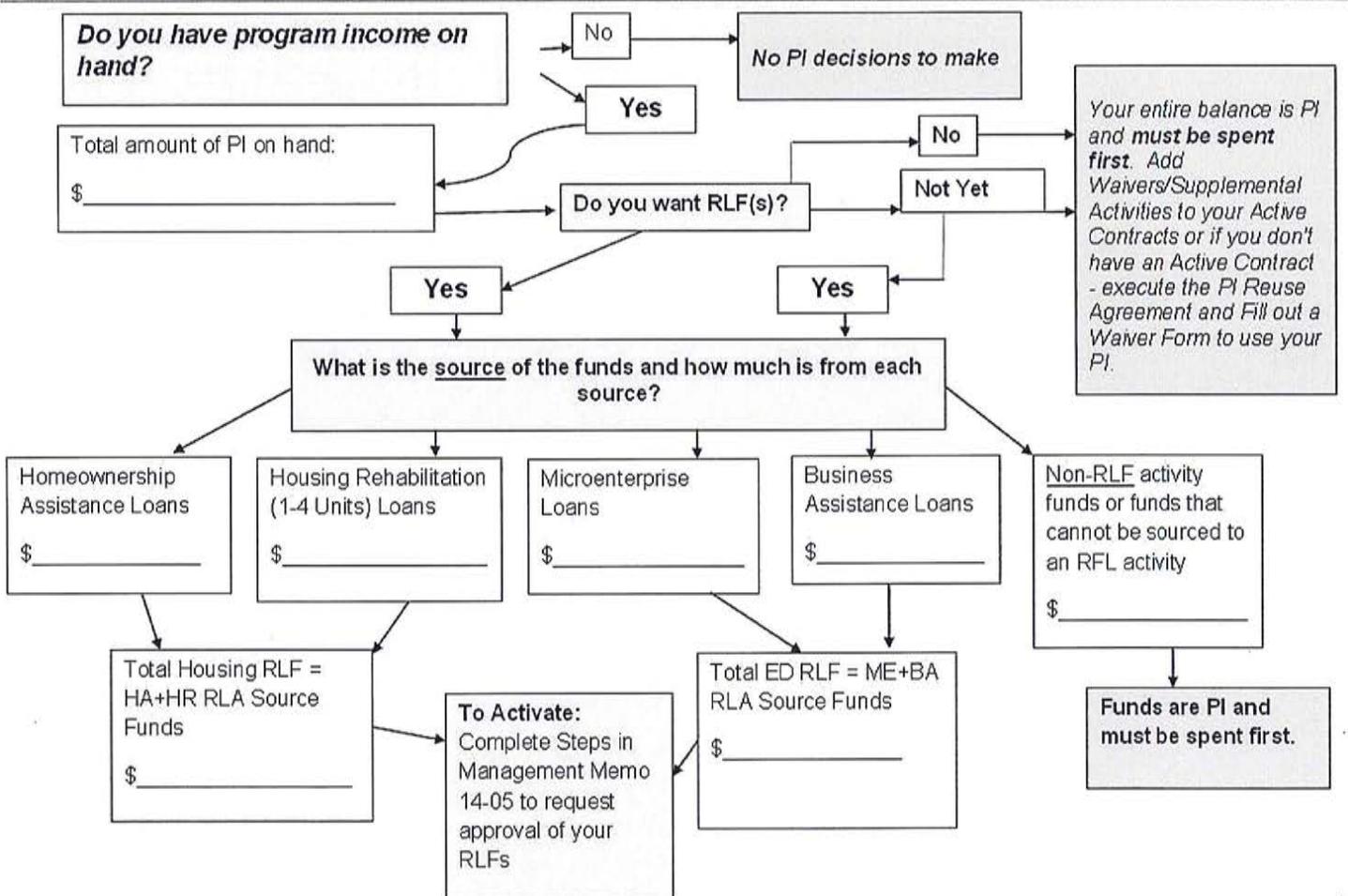
Decision Making

With a number of choices and decisions to make, the Department has a one page document that allows grantees to walk through the process. Please see Establishing a RLF Decision Flow, below.

Additionally, it is recommended that grantees contact the CDBG Representative with any questions regarding their particular circumstances:

<http://www.hcd.ca.gov/fa/cdbg/ContactUs.html>

ESTABLISHING A REVOLVING LOAN FUND - DECISION FLOW CHART



RESOLUTION NO. 2016-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIGGS APPROVING THE SUBMITTAL OF THE 2015 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM INCOME RE-USE PLAN TO THE STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

WHEREAS, California State Department of Housing and Community Development (HCD) requires that all past and current Community Development Block Grant (CDBG) State grant recipients maintain a current, City Council Adopted, and HCD approved Program Income Re-Use Plan ; and

WHEREAS, HCD's latest U.S. Department of Housing and Urban Development (HUD) approved Program Income Re-Use Plan template was released in July of 2014; and

WHEREAS, the City of Biggs is a recipient of past CDBG funds from State HCD, and has received Program Income from the activities completed with those CDBG funds; and

WHEREAS, the City has not adopted a Program Income Re-Use Plan since HCD's latest HUD approved template was released; and

WHEREAS, the City of Biggs needs a valid Program Income Re-Use Plan to re-allocate CDBG program income into new projects or programs; and

WHEREAS, the City of Biggs has CDBG program income that can be made available for new projects and programs once all of HUD and HCD's requirements are met; and

WHEREAS, the Program Income Re-Use Plan is the first HCD requirement that must be met before programming any State awarded CDBG funds, and must be executed by the City Administrator prior to submittal to HCD.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Biggs hereby resolves that the City of Biggs approves the CDBG Program Income Re-Use Plan for execution by the City Administrator and subsequent submittal to HCD for approvals.

I HEREBY CERTIFY that the foregoing **RESOLUTION** was duly introduced, passed and adopted at a regular meeting of the City Council of the City of Biggs, held on the 8th of March, 2016, by the following vote:

AYES: COUNCILMEMBER _____

NOES: COUNCILMEMBER _____

ABSENT: COUNCILMEMBER _____

ABSTAIN: COUNCILMEMBER _____

ATTEST:

APPROVED:

Roben Dewsnup
City Clerk

Roger L. Frith
Mayor

**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
(CDBG)
PROGRAM INCOME (PI) REUSE AGREEMENT**

Execution of the this Program Income (PI) Reuse Agreement by both the Jurisdiction and the California, State Department of Housing and Community Development (Department) provides official notification of the Department's approval for the Jurisdiction to expend PI funds under the State's administration of the Federal Community Development Block Grant Program (CDBG) for (1) State Non-Entitlement Jurisdictions; and (2) former State Non-Entitlement Jurisdictions that are now Entitlement Jurisdictions; pursuant to the provisions of 42 U.S. Code (U.S.C.) 5301 et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I, and 25 California Code of Regulations (CCR), Sections 7050 et seq. CDBG funding is listed in the Catalog of Federal Domestic Assistance as 14.228 - CDBG Community Development Block Grant Program. The Agreement also includes asset repayments from activities administered under Disaster Recovery Initiative (DRI) contracts.

By completing this PI Reuse Agreement and signing the end of this document, the Authorized Representative certifies the Jurisdiction has read, understands and will adhere to the PI Reuse Overview and Process discussed in the first section of this document, the Jurisdictional Certifications in the second section of this document, and Department of Housing and Community Development (hereinafter Department) terms and conditions in the third section of this document.

SECTION ONE: OVERVIEW AND PROCESS

JURISDICTION: _____ City of Biggs

GOVERNING BODY ADOPTED ON: _____

This PI Reuse Agreement establishes policies and procedures for the administration and utilization of PI received as a direct result of eligible activities funded under CDBG and DRI contracts with the Department. *For payments generated under DRI contracts, while the funding was loaned under DRI, when a payment is received, per DRI regulation, the payment becomes CDBG PI.*

Applicability of this Agreement:

This PI Reuse Agreement between the Jurisdiction and Department is required by CDBG Federal Regulation. This Agreement allows Jurisdictions receiving repayments from CDBG and DRI assets to spend those PI funds in the absence of an active Department CDBG grant contract. This Agreement applies to all current Department-eligible Non-Entitlement Jurisdictions and HUD Entitlement Jurisdictions that are receiving Department Non-Entitlement PI funds (CDBG and DRI).

RECEIPT OF PROGRAM INCOME

Pursuant to the definition of PI found at 24 CFR 570.489(e)(2), repayments of assets generated from use of CDBG funds received by the Jurisdiction from the Department are PI. These repayments of loans, lease payments, and proceeds of asset sales will be deposited into one of three separate local PI accounts depending on what activity generated the PI. It is possible that the Jurisdiction may have up to three separate accounts with which to manage PI.

1. If the Jurisdiction has a Department approved Revolving Loan Fund (RLF) for Housing and/or Economic Development (ED), any PI from Housing or ED activities must be deposited into the RLF associated with the activity that generated the PI.

This means:

- a. Housing PI must be deposited into the Housing RLF.
- b. ED PI must be deposited into the ED RLF.

***Note:** The accounts for each RLF must be separate accounts, however, both must be interest bearing.*

2. If RLF(s) are not approved for use, the Jurisdiction must deposit all CDBG repayments into a single regular PI account which must be separate from either of the RLF accounts, but it must also be interest bearing.
3. If repayment comes from a loan or asset that was originally paid with CDBG and non-CDBG funds, the PI accounting and reporting must reflect the correct amounts and proportions of CDBG PI and non-CDBG funds invested in the asset. Only the CDBG portion of the repayment is deposited into one of the three PI accounts.

OVERVIEW OF WAYS TO USE PROGRAM INCOME

There are five (5) ways to manage PI under the Agreement. They are:

1. *Expend PI and RLF monies first on active grant contract activities;*
2. *Expend PI for General Administration (GA) Activities (up to allowable limits);*
3. *Expend through an approved PI Revolving Loan Fund (RLF);*
4. *Expend PI on an approved waiver activity when no active contract is in force; and,*
5. *Return PI annually to the Department.*

The undersigned Jurisdiction certifies that PI will be expended first when there is an active grant contract with the Department. PI being received when there is no active grant contract will be deposited into separate accounts for approved activities under this Agreement (via GA, PI Waiver or RLF) and only be distributed and expended, as follows:

1. Expend PI and RLF Monies First on Active Grant Contract Activities:

If the undersigned Jurisdiction has an active grant contract with the Department, all PI on hand must be expended on open grant activities, prior to requesting grant funds from the Department.

If the undersigned Jurisdiction has a Department approved PI Revolving Loan

Fund (RLF) per this Agreement, and has an active grant contract which includes the same eligible CDBG activity as the RLF, the RLF monies must be expended first before requesting any contract funds from the Department. PI must always be expended first on active contract activities, prior to requesting grant contract funds.

See the Chapter on Program Income and Revolving Loan Funds in the Department's CDBG Grant Management Manual (GMM) for additional information regarding use of PI to pay costs for activities under an active grant contract in the Department.

2. **Expend PI General Administration (PI GA) for GA Activities (up to allowable limits)**

The undersigned Jurisdiction must track a calculation of up to seventeen percent (17%) of PI received annually for eligible GA costs. However, the seventeen percent (17%) PI GA only applies to PI received that is **not** generated by a RLF activity.

PI, including PI GA, must be expended first, prior to requesting funds from the Department under an active grant contract. PI GA funds cannot be held and used only as PI GA costs are incurred. All PI must be spent prior to the next funds request submitted. The Jurisdiction can choose to keep an accounting of the total amount of PI GA available for use based on all regular PI received and report this on Department PI Reports semi-annually.

PI GA funds cannot be used for planning studies or technical assistance activities, these activities can only be funded under awarded grant contracts. See the PI Chapter for further details on eligible PI GA activities under this Agreement.

3. **Expend PI through an approved PI Revolving Loan Fund (RLF):**

To establish one or both of the RLFs discussed below, the undersigned Jurisdiction must submit formal written request for Department approval using the required process included with this Agreement.

The undersigned Jurisdiction agrees to all the Department's RLF requirements as stated in this Agreement and detailed in the GMM Chapter.

The two RLFs and their corresponding definitions, as permitted by this Agreement, are:

A. **Housing Revolving Loan Fund (RLF)**

Eligible housing activities under this RLF include:

- I. Housing Rehabilitation (HR) - Single Unit Residence program for **owner and/or tenant occupied** properties. Matrix code **14A**.
- II. Housing Rehabilitation (HR) - 2-4 Units program for **tenant occupied**

properties. Matrix code **14B**.

- III. Housing Acquisition (HA) - Single-family program for homebuyer assistance. Matrix code **13**.

B. Economic Development (ED) Revolving Loan Funds (RLF)

Eligible ED activities under this RLF include:

- I. Business Assistance (BA) program (direct financial assistance to a for-profit business). Matrix code **18A**; and,
- II. Microenterprise Financial Assistance (ME Loans) program. Matrix code **18C**.

The undersigned Jurisdiction will ensure that their programs have appropriate and up-to-date Guidelines and will administer the programs according to CDBG Regulations and policies and procedures. Per the above activities Grant Management Manual Chapters, Program Guidelines must comply with those rules. **Note:** *CDBG is now requiring that Housing Rehabilitation Guidelines (1-4 Units) be separated into two guidelines: Owner-Occupied (1-unit) and Tenant-Occupied (1-4 Units). At minimum the Housing Rehabilitation Guidelines must be separate by two sections.*

Department written approval must be received before incurring any activity or activity delivery costs associated with implementing any activities under the approved RLF. All approved RLF projects, will be required to be reported to the Department via the applicable CDBG Set-up/Completion reports.

4. Expend PI on an Approved PI Waiver Activity when no active contract is in force.

The undersigned Jurisdiction may only utilize the Department's PI Waiver process when it has no active grant contracts with the Department. Once there are no active contracts with the Department, the undersigned Jurisdiction can have up to two active eligible CDBG activities approved by the Department, for which PI may be expended. Waivers will consist of a single program, service or single project activity. If it is a single program activity, it cannot be the same program activity as funded under an approved RLF.

The undersigned Jurisdiction will follow all PI Waiver procedural requirements as stated in the PI Chapter of the GMM.

Written Department approval is required before expending any PI funds on a Waiver activity. Each Waiver activity must clear the activity General Conditions, and any Special Conditions, which include Federal overlays as posted on Department's webpage.

A PI Waiver project can only be approved if the total project / program cost for the proposed activity is on hand in the Jurisdiction's PI account. Future PI may not be committed for PI Waivers.

The undersigned Jurisdiction understands that PI Waiver activities are limited to two active projects, services and/or programs, and will remain active until close out has been completed and approved by the Department. Each approved Waiver activity will be set up with the Department using current Set-Up Report.

The undersigned Jurisdiction understands if they receive a subsequent award of CDBG funds, upon execution of the new grant contract all waiver activities are to be completed first, after which, PI must be expended first on the active grant contract activities. PI Waivers will not be included in the grant, because Supplemental activities will be included in contracts.

5. Return PI to the Department

The undersigned Jurisdiction has the option to return PI back to the Department. However, semi-annual and annual reports are still required to confirm PI being returned.

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SECTION TWO: PROCEDURES AND USE OF PROGRAM INCOME

Since CDBG is a Federal funding source, Citizen Participation is required when utilizing any of the five (5) ways to use PI listed above. Those requirements are incorporated below.

The City of Biggs certifies that:

1. **Resolution:**

The PI Reuse Agreement was formally adopted via resolution on _____ by the Jurisdiction's Governing Body, executed by the Authorized Representative and submitted to the Department with certified copy of the approving resolution attached for full execution.

2. **Citizen Participation:**

Each of the processes discussed in this Agreement will be carried out in compliance with the CDBG Citizen Participation process, as specified in Federal Regulations at 24 CFR 570.486, and Jurisdiction's public hearing requirements.

3. **Governing Compliance:**

The undersigned Jurisdiction certifies the administration of all CDBG eligible activities conducted under the above described Ways to Spend PI, will be conducted in compliance with all current State and Federal Regulations and policies, including all applicable GMM chapters and Department Management Memorandums.

4. **Ineligible Activities and Costs:**

The undersigned Jurisdiction acknowledges that if ineligible activities or costs are paid for with CDBG PI, those funds must be returned to the Jurisdiction's PI or RLF account (whichever account expended ineligible funds) using local Jurisdiction funds.

The undersigned Jurisdiction acknowledges that ineligible activities or costs paid for with PI under an active grant contract must be repaid to the Department using local non-Federal funds.

5. **Jurisdictions Leaving the State Non-Entitlement Program and Jurisdictions Entering the State Non-Entitlement Program:**

The undersigned Jurisdiction certifies that it will follow these procedures when leaving or entering the State CDBG Program:

A. 24 CFR 570.489(e)(3)(iii) Transfer of program income to Entitlement program.

Jurisdictions that were State CDBG Program participants but become entitlement communities or part of an urban agreement, have the following options for PI and RLFs:

PI not associated with a RLF, the jurisdiction must:

- 1) Complete the process to certify they will be reporting the State PI into the Entitlement Programs process, including receipting the CDBG proceeds into IDIS; or,
- 2) Return all State CDBG PI to the Department, the amounts on hand once the HUD agreement is signed and as it is received until all PI generated by State CDBG funding has been returned.

PI in an approved RLF:

Entitlement jurisdictions and those who are part of an urban agreement may keep their RLF(s) and monies within an RLF as long as the following is met:

- 1) They have a State PI Reuse Agreement signed by the Department and the City/County Authorized Representative.
- 2) Agree to operate the RLF under the Department's RLF rules going forward.
- 3) Report all expenditures and accounting of RLF(s), as required by the Department.
- 4) The Jurisdiction shall be required to have: a) loan servicing policies and procedures; and, b) asset management policies and procedures, pursuant to the Department's Grant Management Manual Chapter on Asset and Real Property Management.

B. 24 CFR 570.489(e)(3) (iv) Transfer of program income of grantees losing Entitlement status.

Upon entry into the State CDBG Program, a unit of general local government that has lost or relinquished its Entitlement status must submit a letter to the Department, signed by the Authorized Representative stating which of the following options the jurisdiction will be implementing. Keep in mind, that retaining Entitlement PI while participating in the State CDBG Program will require PI reporting for both sets of funding. Entitlement PI and any PI generated by State CDBG fund cannot be comingled.

Within 90 days of leaving the Entitlement Program to join the State CDBG

Program, the jurisdiction must certify that it will either:

- 1) Retain PI generated under Entitlement grants and continue to comply with Entitlement Program requirements for PI, including reporting it into IDIS or the urban county; or,
- 2) Retain the PI and transfer it to the State CDBG Program, in which case the jurisdiction must comply with the State's rules for PI and RLF contained in this Agreement and current PI Chapter in the Department's CDBG Grant Management Manual.

6. Requirements of Program Income

This PI Reuse Agreement is intended to satisfy the requirements specified in Federal Statute and Regulation at Section 104(j) of the Housing and Community Development Act ("the Act"), as amended in 1992 and 24 CFR 570.489(e) and (f). These statutory and regulatory sections permit a unit of local government to retain PI for CDBG-eligible activities, with Department approval. Under Federal Guidelines adopted by the State of California's CDBG Program, local governments are permitted to retain PI as long as the local government has received advance approval from the State of a local agreement that will govern the expenditure of the PI. This Agreement has been developed to meet that requirement when an active contract between the Department and the undersigned Jurisdiction is not in force.

The undersigned Jurisdiction certifies their PI will be used to fund eligible CDBG activities that meet a National Objective and any public benefit requirements. Eligible activities, National Objective and public benefit requirements are specified in Federal Statute at Sections 104(b), 105(a) of The Housing and Community Development Act of 1974, and in Federal Regulations at 24 CFR 570.482 and 24 CFR 570.483. The Jurisdiction understands, if it is determined that an activity/project funded with PI that does not meet a National Objective and/or meet the public benefit requirement, the Jurisdiction will be required to use its own local funds to repay the PI Account.

7. Definition of Program Income

"Program Income" means gross income earned by the Jurisdiction from grant-funded activities and is subject to CDBG regulatory requirements pursuant to 24 CFR, Part 570.489(e) - Program Administrative Requirements as amended in the CDBG Final Rule, 24 CFR, Part 570.504 - Program Income, 24 CFR Part 85 - Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, and OMB Circulars A-87 and A-122 as applicable. These regulations include the requirement that the Jurisdiction record the receipt and expenditure of PI as part of the financial transactions of the grant activity(ies).

For activities generating PI that are only partially funded with CDBG funds, such income is prorated to reflect the actual percentage of CDBG participation. Examples of PI include but are not limited to: payments of principal and interest

on housing rehabilitation or business loans made using CDBG funds; interest earned on PI pending its disposition; interest earned on funds that have been placed in a revolving loan account; net proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds; and, income (net of costs that are incidental to the generation of the income) from the use or rental of real property that has been acquired, constructed or improved with CDBG funds and that is owned (in whole or in part) by the participating Jurisdiction or Subrecipient.

8. Fiscal Reporting of Program Income Receipts, Deposits and Disbursements

The undersigned Jurisdiction certifies that CDBG PI will be accounted for using the Department's fiscal year timeframe (July 1 to June 30). All receipts of PI or RLF revenue (and the depositing of those funds into separate account(s)), and expenditures of PI in accordance with this PI Reuse Agreement, will be monitored and reported per the Department's fiscal year cycle. The undersigned Jurisdiction certifies that they will report using the Department's reports/forms and will submit them in a timely manner.

9. Duration of This Program Income Reuse Agreement

The undersigned Jurisdiction certifies that it and its Governing Body understand that this document is effective for five (5) years from the execution date by the authorized CDBG Representative listed in this Agreement. At that time unless here are no further CDBG PI assets generating repayments, or the Jurisdiction has become a HUD entitlement Jurisdiction and uses these funds for entitlement activities, a new PI Reuse Agreement will be submitted to the Department. The Department has the Authority to void the Agreement with notice for cause.

10. Program Income General Administration (PI GA)

- A. After the PI Reuse Agreement is executed, the Jurisdiction reserves the right to calculate and track up to seventeen percent (17%) of PI received pursuant to Section 1, item 2 above, for payment of eligible PI GA costs. PI GA will not be calculated for any RLF deposits. As noted above, these funds cannot be set aside since all PI must be expended first on whatever CDBG cost must be paid, however tracking the amount of PI GA generated by the Jurisdiction's PI revenue permits the Jurisdiction to use that amount on eligible CDBG costs that don't have to meet a National Objective, and ensures the Department is not exceeding the administrative funding cap of twenty percent (20%), as set by Federal statute.
- B. If more funds are expended than what is available under PI GA calculation, the Jurisdiction will be required to return the over-expended PI GA amount back into their PI Account.
- C. Ineligible PI GA costs will be required to be returned to their PI Account.
- D. PI GA funds, once approved for use, may be used to pay for costs

associated with receiving Department approval of PI activities funded under this Agreement. Before submitting any proposed PI activities (Waivers or RLF) for Department approval, the Jurisdiction must hold at least one formal public hearing to discuss eligible activities and proposed PI activities. Department recommends that this public hearing be conducted to review current fiscal year PI activities and proposed and possible activities for future Department applications.

11. Revolving Loan Funds (RLFs)

- A. Pursuant to the criteria noted below, the undersigned Jurisdiction may be eligible to request Department approval of the Housing RLF and/or the ED RLF.
- B. RLFs listed under the Agreement will only be utilized after the Jurisdiction submits written certification and receives written Departmental approval certifying that the proposed RLF meets the Department's definition as follows:
 - 1) There are existing loans and assets from past RLF eligible activities that can be reasonably expected to generate repayments.
 - 2) The existing loans and assets have generated at least one loan repayment in the current fiscal year.
- C. The two RLFs and their respective CDBG eligible activities listed in this Agreement will be administered under the guidance and requirements provided in this Agreement and in the Department's current GMM Chapter on PI, and any subsequent policy, regulation, or statutory guidance from the Department.
- D. Pursuant to Management Memorandum 14-05 and/or the current PI Chapter in the GMM, the undersigned Jurisdiction certifies acknowledgement that the Department reserves the right to cancel the grantee's RLF and require the funds to be returned to the Department as a corrective action for significant, ongoing non-compliance with RLF rules.
- E. The two (2) RLFs listed below each have a multiple eligible CDBG Program activities. All CDBG rules pertaining to eligible RLF Program activities, including Department written approval for establishing, will be followed.

1) Housing Revolving Loan Fund

Eligible housing activities under this RLF include:

- i. Housing Rehabilitation (HR) - Single Unit Residence program for owner and/or tenant occupied properties. Matrix code **14A**.
- ii. Housing Rehabilitation (HR) - 2-4 Units program for owner and/or tenant occupied properties. Matrix code **14B**.
- iii. Housing Acquisition (HA) - Single-family program for homebuyer assistance. Matrix code **13**.

2) Economic Development (ED) Revolving Loan Funds (RLF)

Eligible ED activities under this RLF include:

- i. Business Assistance (BA) program (direct financial assistance to a for-profit business). Matrix code **18A**.
 - ii. Microenterprise Financial Assistance (ME Loans) program. Matrix code **18C**.
- F. Each approved RLF will offer all eligible activities under the RLF definition.
- G. Separate and formally adopted City/County Program Guidelines for each eligible activity must be completed by the Jurisdiction *before* requesting Department approval of a RLF. Program Guidelines and their approval date will be reviewed at monitoring.
- H. The undersigned Jurisdiction acknowledges that although all eligible activities under each approved RLF must be available, the Jurisdiction has the discretion to fund RLF loans for the activity or activities they deem to address the greatest need in their community.
- I. RLF receipts on deposit may be used for one or both single-family housing program activities. Although each Housing activity is required to be approved by the Department for use under the RLF, the Jurisdiction may choose to only operate one activity at a time or all three simultaneously.
- J. In addition, each approved RLF will meet the following criteria:
- 1) RLFs will operate on a fiscal year of July 1 to June 30 for accounting and performance reporting.
 - 2) Jurisdictions will set up RLFs as separate accounts (Housing and ED RLF accounts must be separate) with separate fund and transaction numbers. All other CDBG funds received as PI must be accounted for in a separate account.
 - 3) All accounts set up pursuant to 2.G.2 will be interest bearing.
 - 4) RLF monies will be expended first when the same RLF activity is funded under an awarded active grant contract.
 - 5) RLF projects may be funded with both RLF monies and an active grant contract.
 - 6) RLFs programs will not provide grants to eligible project activities. Thus, activities under an active contract that are funded using only grants rather than loans will use contract funds not RLF monies to pay for the activity. RLF Program activities that are also funded under an active contract, but limited to only grants to projects, will not require RLF funds to be spent first on the active grant activities.
 - 7) The RLFs will primarily provide financing instruments that will revolve, (i.e., loans), RLFs cannot fund projects primarily or solely with grants or forgivable loans.
 - 8) RLF receipts from loans or assets generated from the same program

activity (i.e., single-family housing rehabilitation loan repayments) will only be deposited into a Housing RLF. Thus, repayments from the same program activities that go into an RLF must be used for originating loans for the same program activities.

- 9) RLF PI balances will not be moved to another approved RLF account or to the Jurisdiction's regular PI account. The Department may use a State or Federal disaster declaration to formally allow for re-purposing of PI funds by the Jurisdiction. Funds approved by the Department for re-purposing to meet an urgent need are considered PI and must be expended first under active grant contracts or under approved waivers, if there is no active contract.
- 10) RLFs that become depleted of funds and do not have additional asset repayments to sustain revolving activities, such that no longer meeting the Department's RLF definition, will be canceled by the Department.
- 11) RLF PI received and deposited is not allowable for PI GA expenses thus, seventeen percent (17%) cannot be set aside as with Jurisdictions with separate PI accounts.
- 12) RLFs with no annual revolving activities (i.e., approved loans) are not able to be used by the Jurisdiction for reimbursement of non-revolving costs; therefore, activity delivery (AD) costs are not eligible. **AD costs are only eligible if one or more projects are funded and accomplishment data (i.e., beneficiaries) for those activity(ies), on an annual basis, are reported.**
- 13) RLF projects must be documented as meeting a National Objective. If a project does not meet a National Objective, then all expenses associated with the project (activity and activity delivery funds) must be repaid to the RLF with non-Federal funds.
- 14) Given that RLF revenue cannot be "banked" to remain eligible, a RLF must revolve. To meet the definition of revolving, the undersigned Jurisdiction will not have more than \$100,000 on deposit in an RLF within a fiscal year without making at least one loan. Nor will the undersigned Jurisdiction have more than \$500,000 on hand even if making loans each fiscal year.
- 15) The undersigned Jurisdiction certifies they are aware that the Department will address excess funds and revolving compliance by issuing finding letters to the grantee which could result in the Department cancelling the grantee's RLF, which immediately converts the funds to PI; and, therefore, must be used prior to drawing down grant funds.
- 16) RLF activity delivery funds (AD) may be used to pay for loan servicing costs.
- 17) Loan servicing costs under the RLFs are not eligible as PI GA costs, but are eligible AD costs. As such, loan servicing costs are only eligible if one or more loans are made in a fiscal year.
- 18) Citizens of the Jurisdiction must be the primary beneficiaries of all RLF

Program activities.

- 19) Financial and performance reporting on RLF projects will be done using current CDBG eligible activity Set Up and Completion Report forms, which will collect National Objective data and beneficiary demographics, as HUD required accomplishment information.
- 20) Additional financial reports for RLF PI deposits and expenditures will be done twice a year using the Department's current PI fiscal reporting forms.
- 21) The Jurisdiction will be required to repay the RLF account for ineligible costs or activities with local non-Federal funds.
- 22) Housing RLF Programs will meet the CDBG National Objective of benefit to Low/Moderate-income (Low/Mod) households, per 24 CFR Part 5 and in accordance with the Department's Income Manual.

K. Activity Specific Requirements:

1) **Housing RLF:**

- a. All Housing Rehabilitation and Homeownership Assistance Programs will only fund projects that meet a National Objective and comply with other State and Federal requirements, including Department Management Memorandums and GMM Chapters on Housing Rehabilitation, Multi-Family Rehabilitation (2-4 units) and Homeownership Assistance Activities.
- b. No more than nineteen percent (19%) of funds expended for **Housing Rehabilitation** in the RLF will be used for AD costs on an annual fiscal basis.
- c. No more than eight percent (8%) of funds expended in a fiscal year for **Homeownership Assistance** will be used to reimburse eligible AD costs.
- d. AD costs are not eligible until one loan is approved, closed and project beneficiary information is submitted.
- e. Projects cannot be provided grants.

2) **ED RLF:**

- a. Both ED Programs will only fund projects that meet a National Objective and comply with other State and Federal requirements, including Department Management Memorandums and GMM Chapters on **ME Loans** and **BA** Activities.
- b. For **ME Loans**, income eligibility must be met per 24 CFR Part 5 and in accordance with the Department's Income Manual. For **BA**, income eligibility is done based on meeting National Objective standard of providing jobs to Low/Mod income persons or area benefit for goods or services.
- c. No more than 15 percent (15%) of the total funds expended for **BA** or **ME Loans** activities shall be used to reimburse Jurisdiction for

eligible activity delivery (AD) costs on an annual fiscal basis.

- d. Annual AD costs are not eligible until one loan is approved, closed and project beneficiary information is submitted.
- e. For **BA**, local review and underwriting of business assistance projects requesting a CDBG loan under this RLF shall be conducted under the BA Program Guidelines that have been adopted by the Governing Body of the undersigned Jurisdiction.
- f. For ME Loans, the CDBG eligible activity of direct financial assistance to eligible microenterprise businesses will be conducted under this RLF. Local review and approval of microenterprise financial assistance projects requesting a CDBG loan under this RLF shall be conducted under the undersigned Jurisdiction's ME Loan Program Guidelines that have been adopted by the Governing Body. **Note:** *This subsection applies to Microenterprise loans only, not ME grants. Financial Assistance that is solely a grant cannot be made through an RLF.*

12. Loan Portfolio and Asset Management Policies and Costs

- A. The undersigned Jurisdiction certifies that it has asset management policies and loan portfolio servicing policies that are in compliance with HUD standards per 24 CFR Part 570, OMB Circulars A-87, A-122, A-133 and 24 CFR Part 85.
- B. The use of CDBG funds creates public financial assets. The public financial assets created can be in the form of loans or other repayment instruments which result in PI. Financial assets may also be in the form of real property or chattel (equipment and fixtures). All assets created from the use of CDBG funds must be administered in compliance with OMB Circulars A-87, A-122, A-133, 24 CFR Part 85. These policies will be used for managing all CDBG assets, including those which generate PI and RLF PI.
- C. General Administration PI funds may be used to reimburse the Jurisdiction for loan servicing and asset management costs. If the Jurisdiction has no PI GA available, GA funds from active grant contracts may be used to pay for eligible loan servicing costs.

13. Program Income Waivers

- A. The PI Waiver Submission Process will only be conducted when the undersigned Jurisdiction has no active grant contract(s) with the Department.
- B. The process below will be followed if a PI Waiver is to be requested:
 - 1) All PI Waiver requests will be submitted on approved Departmental forms for the Department's written approval.
 - 2) After the Department's review of the activity for eligibility and National

Objective compliance, the PI Waiver will be formally adopted via public hearing and resolution of the Jurisdiction's Governing Body, as part of the PI Waiver General (and Special Conditions if applicable) Clearance process.

- 3) Expenditure of PI Waiver funds will not commence until clearance of all required General and Special Conditions have been met and written Departmental approval has been issued to the Jurisdiction.
 - 4) Possible Waiver activities will be discussed at a properly noticed public hearing, held in front of the Jurisdiction's Governing Body, prior to submission of a Certified Resolution, as part of a PI Waiver Request to the Department.
 - 5) The PI Waiver request must be submitted in accordance with current Department policy, and any subsequent policy, regulation or statutory guidance.
 - 6) PI Waiver activity reporting will be submitted per current Departmental policies and includes financial accounting of all PI received and expended, including PI Waivers and PI Waiver activity performance.
 - 7) PI Waiver activities must be fully funded with PI already on hand.
 - 8) Only two (2) PI Waivers may be open and active at any one time.
 - 9) RLF funds will not be used for PI Waivers, since RLF monies must be expended on the activity that generated the payments.
 - 10) PI Waivers will not be approved for the same program activities for approved RLFs.
- C. PI GA and PI Waiver financial and performance reporting will be done using current CDBG eligible activity Set Up and Completion Reports forms, which will collect National Objective data and beneficiary demographics for HUD required accomplishment information.
- D. Additional financial reports for PI GA, PI Waivers, PI deposits and expenditures will be done semi-annually using the Department's current PI fiscal reporting forms.
- E. Ineligible costs will be required to be repaid to the PI Account. In some cases with ongoing significant compliance issues, the Department reserves the right to require the jurisdiction return all PI to the Department until it is satisfied that the jurisdiction has resolved all compliance issues.

14. Program Income Not Associated with an RLF

- A. Provided the undersigned Jurisdiction has made the Department aware at the beginning of the fiscal year they intend to exercise the \$35,000 Rule, PI which is received annually that has a cumulative amount up to \$35,000 (RLF receipts are not included in the \$35,000 Rule calculation) may be "re-categorized" as non-CDBG funds. In electing to exercise the \$35,000 Rule, the Jurisdiction agrees not to expend CDBG revenue until either the fiscal year ends or the amount received goes above \$35,000, at which point the

jurisdiction must consider the revenue as CDBG PI and must use it, first prior to drawing CDBG contract funds.

- B. The undersigned Jurisdiction certifies that it acknowledges, if it has PI on hand and has not applied for or been awarded CDBG funds within the past three NOFAs, the Jurisdiction will be required to submit a PI Expenditure Plan for its PI on hand. The plan must be submitted via the CDBG PI Waiver process. If the Jurisdiction does not initiate the request, the Department will send the Jurisdiction a letter requiring submission of the plan within a set time frame. If the Jurisdiction does not respond to the Department's letter, the Jurisdiction will be required to return all PI on hand to the Department, regardless of the amount of PI.

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SECTION THREE: DEPARTMENT TERMS, CONDITIONS AND AUTHORIZATION

TERMS AND CONDITIONS: The undersigned Jurisdiction certifies that all terms and conditions listed below have been read and understood, and will be implemented and followed:

1. **Authority & Purpose**

This Agreement provides official notification of the Jurisdiction's PI Reuse Agreement's approval under the State's administration of the Federal CDBG for Non-entitlement Jurisdictions pursuant to the provisions of 42 U.S. Code (U.S.C.) 5301 et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I, and 25 California Code of Regulations (CCR), Sections 7050 et seq. The Program is listed in the Catalog of Federal Domestic Assistance as 14.228 - Community Development Block Grant Program.

In accepting the PI Reuse Agreement approval, the Jurisdiction agrees to comply with the terms and conditions of this Agreement, all exhibits hereto and the representations contained in the Jurisdiction's PI Reuse Agreement. Any changes made to the PI Reuse Agreement after this Agreement is accepted must receive prior written approval from the Department.

2. **Distribution for Reuse of PI**

- A. The Jurisdiction shall perform PI funded activities as described in the Distribution for Reuse in the PI Reuse Agreement. All written materials or alterations submitted as addenda to the original PI Reuse Agreement and which are approved in writing by the Department are hereby incorporated as part of the PI Reuse Agreement.

The Department reserves the right to require the Jurisdiction to modify any or all parts of the PI Reuse Agreement in order to comply with CDBG requirements. The Department reserves the right to review and approve all work to be performed by the Jurisdiction in relation to this Agreement. Any proposed revision to the work must be submitted in writing for review and approval by the Department and may require an amendment to this Agreement. Approval shall not be presumed unless such approval is made in writing by the Department.

- B. All PI funded activities must be approved by the Department prior to implementation or incurring activity costs (clear the activity General and any Special Conditions, which include Federal overlays, as posted on Department's webpage). All eligible activities shall principally benefit Low/Mod-income persons or households or businesses residing in the

Jurisdiction. HUD defines Low/Mod as having an annual income that is no more than 80 percent (80%) of the county median area income, adjusted for household size.

3. Sufficiency of Funds and Termination

The Department may terminate this Agreement at any time for cause. The Jurisdiction will have at least 14 days upon receipt of the Department's written notice. Termination shall consist of violations of any terms and/or conditions of this Agreement, upon the request of HUD, or withdrawal of the Department's expenditure authority.

The Department reserves the right, for any significant on-going non-compliance with RLF or PI rules, to cancel any RLF and require all RLF and PI funds to be returned to the Department.

4. Meeting National Objectives

All activities performed under this Agreement must meet one of the National Objectives determined by the HUD CDBG statutes and regulations. Use the CDBG National Objective Matrix to determine the correct standard for each activity conducted under this Agreement. National Objectives are authorized under Title I of the Housing and Community Development Act of 1974, as amended.

- A. **Benefit to HUD defined Low/Mod-income person or household (LMI).**
The term Low/Mod-income is defined under CDBG as no more than 80 percent (80%) of the median area income, as determined by HUD, per Federal Regulation 24 CFR, Part 570.483(b); and/or,
- B. **Prevention or elimination of slums or blight** when activity qualifies per Federal Regulation 24 CFR, Part 570.483(c). Jurisdictions may only use this National Objective after submitting a written request to the Department and receiving written authorization; or,
- C. Jurisdictions may use the National Objective of Urgent Need, per Federal Regulation 24 CFR, Part 570.483(d), if a formal written request is made to the Department and the request is authorized in writing.

5. Inspections of Activities

- A. The Department reserves the right to inspect any activity(ies) performed hereunder to verify that the activity(ies) is in accordance with the applicable Federal, State and/or local requirements and this Agreement.
- B. The Jurisdiction shall inspect any activity performed by contractors and subrecipients hereunder to ensure that the activity(ies) is in accordance with the applicable Federal, State and/or local requirements and this Agreement.

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

6. Insurance

The Jurisdiction 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 Jurisdiction and the Department to be necessary for specific components of the activity(ies) described in this Agreement.

7. Contractors and Subrecipients

A. The Jurisdiction 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 Contractors.

- 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 Jurisdiction and any contractor or subrecipient shall require:

- 1) Compliance with the applicable State and Federal requirements of 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 minimum, the State-required Workers' Compensation Insurance for those employees who will perform the activity(ies) or any part of it.
- 3) Maintenance of, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm or corporation, who may be injured or

damaged by the contractor, or any subcontractor in performing the activity(ies) or any part of it.

- 4) Compliance with the applicable Equal Opportunity Requirements described in this Agreement.

C. Contractors shall:

- 1) Perform the 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 period of five (5) years from date of termination of this Agreement, or five (5) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement, and any amendments, whichever is later.
- 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.

8. **Obligations of the Jurisdiction with Respect to Certain Third Party Relationships**

The Jurisdiction 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 Activities funded under this Agreement with respect to which assistance is being provided under this Agreement to the Jurisdiction. Jurisdiction is responsible to oversee any third party contractors or subrecipients and monitor their work for CDBG compliance.

The Jurisdiction 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 Jurisdiction, 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.

9. Periodic Reporting Requirements

During the term of this Agreement, the Jurisdiction must submit the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. The Jurisdiction's performance under this Agreement will be based, in part, on whether it has submitted the reports on a timely basis.

- A. Semi-Annual PI Expenditure/Performance Report: Submit by January 31 and July 31 of each year regardless of whether or not the Jurisdiction has any unexpended PI. PI Waivers or open Grants with no accomplishments are not excluded to the reporting requirement.
- B. Annual Federal Overlay Reporting: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State Fiscal Year. Annual Reporting includes but is not limited to: Section 3 and Minority Owned Business/Women Owned Business (MBE/WBE).
- C. 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.
- D. Set-Up and Completion Reports for each eligible activity as posted on the Department's webpage.
- E. Any other reports that may be required as a General/Special Condition of this Agreement.

10. Monitoring Requirements

The Department shall perform a program and/or fiscal monitoring of the activity(ies). The Jurisdiction 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 Jurisdiction's performance score on future applications.

Additionally, the Department reserve the right to suspend a Jurisdiction's authority to expend PI (Waiver, RLF and/or PI attached to an open grant) based on significant compliance issues, reporting concerns or serious lack of cooperation in clearing PI monitoring findings.

11. Signs

If the Jurisdiction places signs stating that the Department is 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 Program.

12. Audit/Retention and Inspection of Records

- A. The Jurisdiction must have intact, auditable fiscal records at all times. If the Jurisdiction is found to have missing audit reports from the Office of the State Controller (SCO) during the term of this Agreement, the Jurisdiction will be required to submit an Agreement to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Jurisdiction will be subject to termination of this Agreement and disencumbrance of the funds awarded. The Jurisdiction's audit completion Agreement is subject to prior review and approval by the Department.
- B. The Jurisdiction 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 Jurisdiction 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, upon reasonable notice, 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 Jurisdiction further agrees to maintain such records for a period of five (5) years after final payment under this Agreement. The Jurisdiction 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 Jurisdiction.
- D. Absent fraud or mistake on the part of the Department, the determination by the Department of allowable expenditures shall be final.
- E. For the purposes of annual audits under OMB Circular A-133 (The United States Office of Management and Budget Circular for Audits of States and Local Governments), Jurisdiction shall use the Federal Catalog Number 14.228 for the State CDBG Program.
- F. Notwithstanding the foregoing, the Department will not reimburse the Jurisdiction for any audit cost incurred after the expenditure deadline of this Agreement.
- G. The Jurisdiction understands that the expenditure of PI is covered under the OMB A-133 Single Audit Requirements and will meet all these requirements and report said PI Expenditure along with grant funds each fiscal year.

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

Pursuant to 24 CFR 570.611, no member, officer, or employee of the Jurisdiction, 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 Jurisdiction 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.

14. Waivers

No waiver of 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 Jurisdiction 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.

15. 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 Jurisdiction 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.

16. 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 Jurisdiction 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 Jurisdiction shall be responsible for the notifications, inspections and clearance certifications required under these Regulations.

17. Prevailing Wages

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Jurisdiction shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 (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 Jurisdiction and a licensed building contractor, the Jurisdiction shall serve as the "awarding body" as that term is defined in the LC. Where the Jurisdiction 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. Compliance with State and Federal Laws and Regulations

- A. The Jurisdiction 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 Jurisdiction, its subcontractors, contractors or subcontractors, and the Reuse activity(ies), and any other State provisions as set forth in this Agreement.
- B. The Jurisdiction agrees to comply with all Federal laws and regulations applicable to the CDBG Program and to the activity(ies), and with any other Federal provisions as set forth in this Agreement.

19. Anti-Lobbying Certification

The Jurisdiction shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this 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.

"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 and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement; and,
- 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."

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

21. Citizen Participation

The Jurisdiction 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.

22. Clean Air and Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 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.

23. Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same. The Jurisdiction shall report all perceived or actual conflicts of interest cases to the State for review before financial benefits are given.

24. Environmental Requirements

The Jurisdiction shall comply with the provisions of the National Environmental Policy Act (NEPA) by following the procedures contained in 24 CFR, Part 58. The Jurisdiction shall not undertake any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives under 24 CFR, Part 58.22 until HUD or the Department has issued an environmental clearance.

25. Equal Opportunity

A. The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances

During the performance of this Agreement, the Jurisdiction assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status or religious preference, under any activity funded by this Agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

B. Rehabilitation Act of 1973 and the "504 Coordinator"

The Jurisdiction further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR, Part 8, including, but not limited to, for Jurisdiction's with fifteen (15) or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the "504 Coordinator."

C. The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance

- 1) The activity(ies) to be performed under this Agreement are subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 U.S.C. 1701(u). Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in 24 CFR, Part 135.34(a)(2).
- 2) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- 3) The Jurisdiction will include these Section 3 clauses in every contract and subcontract for Work in connection with the activity(ies) and will, at the direction of the Department, take appropriate action pursuant to the contract or subcontract upon a finding that the Jurisdiction or any contractor or subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR, Part 135 and will not let any contract unless the Jurisdiction or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- 4) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided to the activity(ies), binding upon the Jurisdiction, its successors and assigns. Failure to fulfill these requirements shall subject the Jurisdiction, its contractors and subcontractors and its successors to such sanctions as are specified by 24 CFR, Part 135 and those sanctions specified by this Agreement.

D. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or More

The Jurisdiction hereby agrees to place in every contract and subcontract for construction exceeding \$10,000 the Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246), the Standard Equal Employment Opportunity, and the Construction Contract Specifications. The Jurisdiction furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts.

26. Flood Disaster Protection

- A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3 (a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to FDPA, Section 102(d) of said Act.
- B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said Act.
- C. Any contract or agreement for the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

27. Federal Labor Standards Provisions

The Jurisdiction shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of:

- 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) prohibits any person from (1) providing, attempting to provide or offering to provide any kickback; (2) soliciting, accepting or attempting to accept any kickback; or, (3) including directly or indirectly, the amount of any kickback prohibited by

clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

- C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that workers receive "overtime" compensation at a rate of one to 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 I, 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 Jurisdiction 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.

28. Procurement

The Jurisdiction shall comply with the procurement provisions in 24 CFR, Part 85.36: Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

29. Non-Performance

The Department shall review the actual National Objective and/or Public Benefit achievements of the Jurisdiction. In the event that the National Objective and/or Public Benefit requirements are not met, the Department will require the recapture of the entire PI expended on that project/activity. Additional remedies may include suspending the Jurisdiction's authority to use PI funds until the Jurisdiction has developed capacity to ensure future PI funds will be used for eligible activities that will meet a National Objective.

30. 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 acquisition of real property is carried out by the Jurisdiction and assisted in whole or in part by funds allocated by CDBG.

31. Uniform Administrative Requirements

The Jurisdiction shall comply with applicable Uniform Administrative Requirements as described in 24 CFR, Section 570.502, including cited Sections of 24 CFR, Part 85.

32. **Section 3**

The Jurisdiction will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing Regulations at 24 CFR, Part 135.

33. **Affirmatively Furthering Fair Housing**

The Jurisdiction 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.

34. **General and Special Conditions for Activities**

Each eligible activity to be administered and paid for with PI under this agreement must be approved in writing by the Department. After receiving written approval, the Jurisdiction will submit all required documents listed on the Department's General Conditions Checklist for the approved activity. Upon completion of the General Conditions Checklist, the Department will provide written authorization to proceed with implementing the approved activity.

The above is applicable to RLFs, Waivers and Supplemental Activities.

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Please continue to the CERTIFICATION page.**

SECTION TWO: CERTIFICATION FOR USE OF PROGRAM INCOME

Certified Approving Resolution Is Attached

I certify that the foregoing is true and correct, and will follow all requirements of this Agreement and all Sections above. I understand that my certification also acknowledges that serious compliance issue with the above requirements could result in the State suspending the City of Biggs authority to expend PI; or may require the City of Biggs to return unused PI to the State until the City of Biggs clears the serious compliance issues.

Signature of Jurisdiction Authorized Representative

Date Signed

Mark Sorenson, City Administrator

Name and Title of Jurisdiction Authorized Representative

Signature of CDBG Section Chief

Date Signed

Name of CDBG Section Chief