

**AWARD OF HAZARD MITIGATION ASSISTANCE FUNDS TO [GRANTEE]
CONDITIONS OF APPROVAL**

The City has determined that [NAME] (“Grantee”) is eligible to receive Hazard Mitigation Assistance Funds for [PROJECT DESCRIPTION] (“Project”), subject to the requirements of 2 C.F.R. Part 200 and Federal Emergency Management Agency’s (“FEMA”) Program Policy for Hazard Mitigation Assistance contracting. As of [DATE], the City approves the award of Hazard Mitigation Grant (“Grant”) funds to Grantee, subject to the following conditions.

1. Compliance with Hazard Mitigation Assistance Program Requirements. Grantee acknowledges that work performed on the Project will be funded through a Hazard Mitigation Grant awarded to the City by FEMA and the California Governor’s Office of Emergency Services (“Cal OES”). Grantee will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives. Grantee will adhere to the requirements found in 2 C.F.R. Part 200, Appendix II, as applicable, including but not limited to the requirements set forth herein. In the event of a conflict between federal and local requirements, the federal requirements will prevail. No other state or federal funds outside of funding secured through the Retrofit Grants Program may be spent on the Project.

2. Eligible Expenses.

a. Grantee may be reimbursed up to 75% of their total FEMA-eligible seismic retrofit design costs up to a maximum of \$_____.

b. The Grantee may be reimbursed up to _____% of their total FEMA-eligible construction costs up to a maximum of \$_____.

c. Grant reimbursements are based on the total amount paid for retrofit construction up to the stated project valuation on the building permit. If construction costs exceed the stated valuation, Grantee may request an increase the permit valuation prior to permit issuance in order. Additional permit fees will apply, and Grantee may be subject to additional requirements to support a higher project valuation.

3. Ineligible Expenses. Grantee may not seek and is not entitled to reimbursement for the ineligible expenses, including but not limited to the following:

a. Amounts paid to unlicensed design or construction professionals.

b. Costs unrelated to the seismic retrofit or that are outside the scope of the Retrofit Grants Program Technical Guidelines.

c. Cash payments

d. Design costs incurred prior to October 10, 2017.

e. Permit fees.

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4. Project Approval. The Project will be completed according to the building plans approved by the Building and Safety Division, and by FEMA’s environmental historic (EHP) review team. No construction may commence prior to receiving FEMA approval. If the plans are revised during construction, any revision must be reviewed and approved by the Building and Safety Division Retrofit Grants staff and FEMA to ensure eligibility for Grant funding.

5. Selection of Design Professionals and Contactors.

a. Grantee shall seek multiple bids from design professionals and contractors in order to be eligible for reimbursement under the Retrofit Grants Program. Only licensed professionals may be used to perform services eligible for reimbursement under this Grant.

b. Each architect or other design professional retained by Grantee shall comply with the requirements of the attached Engineer/Architect Provision.

c. Each contractor retained by Grantee shall comply with the requirements of the attached Contractor Provision.

d. Grantee shall execute a contract with each design professional and contractor retained to perform work on the Project that includes terms to ensure compliance with the terms set forth in Engineer/Architect and Contractor provisions.

e. Grantee shall be responsible for ensuring funds are available to pay design and construction professionals. Funding through the Retrofit Grants Program reimburses a portion of the total retrofit costs, paid by Grantee, and does not provide funding up front. Grantee shall bear the sole responsibility for cost overruns in completing this project.

f. Grantee acknowledges that the City of Berkeley, FEMA, and OES are not parties to any contracts for design and construction services eligible for reimbursement under this grant award, and are therefore not subject to obligations or liabilities that may result from the contract terms.

6. Compliance with Technical Requirements. The Project shall satisfy Retrofit Grants Program technical requirements specific to each eligible building type, as described in the Technical Guidelines.

7. Completion of Project. Grantee must complete the Project, obtain approval through a final inspection, and submit all reimbursement request materials within nine (9) months of permit issuance, no later than **XXX**. Grantee shall promptly notify program staff in writing of any events, developments, or changes that could affect the completion of the Project.

8. Recoupment of Grant Funds. If it is determined that all or part of the Grant award was disbursed for ineligible goods or services, Grantee shall return said amount to the City. Grantee shall indemnify and hold harmless the City from any loss resulting from Grantee’s failure to comply with applicable procurement standards and FEMA policies, including but not limited to a loss resulting from the recoupment of Grant funds by Cal OES or any other state or federal

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agency. The City may at its sole discretion withhold the disbursement of Grant funds if it determines that Grantee has failed to comply with federal procurement standards, FEMA policies, or the conditions set forth herein.

9. Project Assurances for Federal Hazard Mitigation Grants. Grantee acknowledges the following:

a. Grantee has the legal authority to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

b. Grantee will give the awarding agency, the Comptroller General of the United States, Federal Office of Inspector General, and if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

c. Grantee will comply with the requirements of the assistance-awarding agency with regard to the drafting, review and approval of construction plans and specifications.

d. Grantee will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or state.

e. Grantee will initiate and complete the work within the time frame specified in Section 7 after receipt of approval to initiate construction by the City and FEMA.

f. Grantee will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801 *et seq.*), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

g. Grantee will comply with all federal statues relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibit discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255) as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil

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Rights Act of 1968 (42 U.S.C. § 3601 *et seq.*), as amended, relating to nondiscrimination in the sale rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made, and (j) the requirements on any other nondiscrimination statute(s) which may apply to the application.

h. Grantee will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal and federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.

i. Grantee will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$5,000 or more.

j. Grantee will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.O. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.O. 93-205).

k. Grantee will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

l. Grantee will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1 *et seq.*).

m. Grantee will disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with 2 C.F.R. § 200.112.

n. Grantee will comply with all applicable requirements of all other federal laws, Executive Orders, regulations and policies governing this program.

o. Grantee will disclose to the City in a timely manner, in writing all violations of criminal law involving fraud, bribery, or gratuity violations potentially affecting the validity of

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the Grant award under 2 C.F.R. § 200.113.

p. Grantee will not make any award any contract (including any subcontract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension."

10. False Claims Act. Grantee further acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the receipt and expenditure of funds under this Grant.

11. [PERTAINING TO CONTRACTS EXCEEDING \$100,000] Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352. None of the funds awarded under this Grant may be expended to pay 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 (A) the awarding of any federal contract; (B) the making of any federal grant; (C) the making of any federal loan; (D) the entering into of any cooperative agreement; or (E) the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. Grantee shall ensure and certify compliance with these requirements pursuant to 31 U.S. Code § 1352(b).

12. [PERTAINING TO CONTRACTS EXCEEDING \$250,000 (Simplified Acquisition Threshold)] Grants exceeding the Simplified Acquisition Threshold of \$250,000 must address administrative, contractual, or legal remedies, and provide for such sanctions and penalties as appropriate.

13. Termination. The City may rescind the Grant if the Grantee fails to comply with federal procurement standards, FEMA policies, or the conditions set forth herein, and reserves the right to rescind the Grant at its sole convenience. In the event of such rescission, Grantee will no longer be eligible for federal funding through the Retrofit Grants Program, and the City shall not be liable to the Grantee for any costs accrued during the course of the Project. If it is determined that the City improperly rescinded the Grant for default, such termination shall be deemed a rescission for convenience.

ACKNOWLEDGEMENT

Grantee hereby acknowledges that it has reviewed and will comply with the conditions on the receipt of the Hazard Mitigation Assistance Grant set forth above.

By: _____

Print Name: _____

Title: _____

Date: _____

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