

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number  
24-1008

SAP Number  
\_\_\_\_\_

## Community Development and Housing

<b>Department Contract Representative</b>	<u>Carrie Harmon</u>
<b>Telephone Number</b>	<u>(909) 382-3983</u>
<b>Contractor</b>	<u>State of California Department of Housing and Community Development</u>
<b>Contractor Representative</b>	<u>Kelvin Singh</u>
<b>Telephone Number</b>	<u>(916) 776-7420</u>
<b>Contract Term</b>	<u>Upon execution through 10/15/2025</u>
<b>Original Contract Amount</b>	<u>\$259,772</u>
<b>Amendment Amount</b>	_____
<b>Total Contract Amount</b>	<u>\$259,772</u>
<b>Cost Center</b>	<u>6210002484</u>
<b>Grant Number (if applicable)</b>	<u>23-ESG-18014</u>

**Briefly describe the general nature of the contract:** *Emergency Solutions Grant Continuum of Care Agreement (State Standard Agreement No. 23-ESG-18014) between San Bernardino County Continuum of Care and the State of California Department of Housing and Community Development in the amount of \$259,772 to fund Rapid Rehousing, Street Outreach, Homeless Management Information System, and grant administration costs, effective upon execution and through October 15, 2025.*

**FOR COUNTY USE ONLY**

Approved as to Legal Form Signed by: <u>Suzanne Bryant</u> Suzanne Bryant, Deputy County Counsel Date <u>October 8, 2024</u>	Reviewed for Contract Compliance _____ Date _____	Reviewed/Approved by Department _____ Carrie Harmon, Director Date <u>October 8, 2024</u>
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**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

23-ESG-18014

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of Housing and Community Development Agency (HCD)

CONTRACTOR NAME

San Bernardino County

2. The term of this Agreement is:

START DATE

Upon HCD Approval

THROUGH END DATE

October 15, 2025

3. The maximum amount of this Agreement is:

\$259,772

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Authority, Purpose, and Scope of Work	8
Exhibit B	Budget Detail and Payment Provisions	4
Exhibit C *	General Terms and Conditions	GTC-04/2017
+ -	Exhibit D ESG Program Terms and Conditions	40
+ -	Exhibit E Project Specific Provisions and Special Terms and Conditions	2

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

San Bernardino County

CONTRACTOR BUSINESS ADDRESS

385 N. Arrowhead Avenue, 5th Floor

CITY

San Bernardino

STATE

CA

ZIP

92415

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

23-ESG-18014

PURCHASING AUTHORITY NUMBER (If Applicable)

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of Housing and Community Development (HCD)

CONTRACTING AGENCY ADDRESS

651 Bannon Street, Suite 700

CITY

Sacramento

STATE

CA

ZIP

95811

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Exempt per SCM Vol. 1 4.04. A.3 (DGS memo dated 6/12/1981)

## EXHIBIT A

### AUTHORITY, PURPOSE AND SCOPE OF WORK

#### 1. Authority & Purpose

This Standard Agreement (hereinafter "Agreement") will provide official notification of the reservation of funds under the State of California's reservation of funds under the State of California's administration of the federal Emergency Solutions Grants Program Allocation (hereinafter, "ESG " or the "Program") by the Department of Housing and Community Development (hereinafter the "Department" or "HCD") pursuant to the provisions of 42 USC 11371 – 42 USC 11378, ("Federal Statutes"), the Catalog of Federal Domestic Assistance Number 14.231, 24 CFR Part 576, ("Federal Regulations"), and 25 California Code of Regulations (CCR) Section 8400 et seq. ("State Regulations") all as shall be amended from time to time.

Pursuant to the implementation of Assembly Bill No. 197 in 2022, which amended the Health and Safety Code D. 31, Pt. 2, Ch.19, upon which the State Regulations are authorized, the State Regulations are to be repealed upon the adoption of Guidelines for the Program. The Contractor is hereby noticed and invited to partake in the ESG stakeholder process for the purpose of the development and implementation of Guidelines. The Agreement, as executed under the effectiveness of the State Regulations, will continue to adhere to the State Regulations unless the Contractor and the Department mutually amend this Agreement to adopt the Guidelines and to remove application of the State Regulations.

ESG provides funds for a variety of activities to address homelessness as authorized under the federal Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 and State program requirements. HCD administers the ESG program with funding received from the U.S. Department of Housing and Urban Development (HUD).

The ESG program provides grant funding to:

- (1) engage homeless individuals and families living on the street,
- (2) rapidly re-house homeless individuals and families,
- (3) help operate and provide essential services in emergency shelters for homeless individuals and families, and
- (4) prevent individuals and families from becoming homeless. This contract specifically provides funding for specific program activities described in Exhibit D, Section (3).

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HCD receives ESG funds from HUD and then HCD (as Grantor), via this Agreement, is making a grant of specific ESG funds to a grantee, who is also known as the Contractor. In accepting this reservation of funds, the "Contractor" as defined in Exhibit D (2)(A)(11) also, referred to as the "Administrative Entity" as defined in the State Regulations agrees to comply with the terms and conditions of this Agreement, as it relates to the ESG Notice of Funding Availability (NOFA) under which the Contractor applied, the representations contained in the Contractor's Application (hereinafter, "Application"), for the ESG funding allocations, and the requirements of the authorities cited above. Any and all changes made to the submitted and awarded Application after this Agreement is executed must receive prior written approval from the Department.

For purposes of this agreement Contractor is the Contractor identified in the STD 213 and which is further defined in Exhibit D (2)(A)(11) definitions section.

### 2. Scope of Work

- A. Contractor shall perform the Scope of Work ("Work") required as described in this Agreement and in the Application, which is on file electronically with the Department and which is incorporated herein by reference. Contractor shall be responsible for ensuring its selected homeless service providers perform the Work set forth in Exhibit E of this Agreement. All written materials or alterations submitted as addenda to the original Application, and which are approved in writing by the Department are hereby incorporated as part of the Application. The Department reserves the right to require the Contractor to modify any or all parts of the Application in order to comply with ESG requirements. The Department reserves the right to monitor all Work to be performed by the Contractor and service providers in relation to this Agreement. Any proposed revision to the Scope of 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 by the Department in writing.
- B. Contractor shall perform the Work, only in the areas as identified, and in accordance with the approved Application and as required by Federal ESG requirements at 24 CFR Section 576 and 25 CCR Section 8403. Contractor's selected homeless service providers shall provide services in the areas identified in the application/award recommendation package submitted to the Department. Services shall be provided by the Contractor and the Contractor's funded service providers for at least the term of the ESG grant. For the purposes of performing the Scope of Work, the Department agrees to provide the amount(s) identified in Exhibit E. Unless amended in writing, the Department shall not be liable for any

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costs in excess of the total approved budget. The Department shall not, under any conditions, be liable for any unauthorized or ineligible costs or activities.

### 3. Allocation of funds pursuant to State Regulations, Section 8402, Effective Date and Commencement of Work

This Agreement is effective upon the date of the Department representative's signature on page one of the fully executed Standard Agreement, STD 213, (the "Effective Date"). In addition, no Program funds shall be incurred until any required environmental review process has been completed, as required under 24 CFR 58. Contractor agrees that the Work shall be completed by the expenditure date specified in Exhibit E, Provision Ex. A – E.2.

- A. Contractor must obligate all funds within 120 days from the date of the award notification letter for funding. "Obligate" means that the Contractor has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. In the case of an award made to a general-purpose local government, also known as an "Administrative Entity," that subcontracts with private nonprofit organizations via letters of awards and Service Provider Agreements, the service providers are subject to obligate the funds within one hundred and twenty (120) days from the date of the award notification letter received by the general-purpose local government.
- B. Contractor agrees to provide documentation satisfactory to the Department evidencing the obligation of ESG funds within 120 days from the date the Department made grant funds available to the Contractor. If the Contractor fails to provide such documentation, the Department may disencumber any portion of the amount authorized by this Agreement with a 14-day written notification.
- C. Contractor and its service providers agree that the Work shall be completed by the expenditure date specified in Exhibit A, Section 4 and that the Work will be provided for the full term of this Agreement.

### 4. Term of Agreement and Deadlines

- A. This Agreement will expire on the date described in Exhibit E, Provision Ex. A - E.2.
- B. All Program funds shall be expended by the date described in Exhibit E, Provision Ex. A-E.2.

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- C. All Final Request for Funds (RFF) shall be submitted to the Department within 30 days after the expenditure deadline.
- D. Reimbursements will not be made after this Agreement expires.
- E. The first funds request must be submitted within 120 days from the execution date of this Agreement. Contractors are encouraged to submit a request for funds monthly and must submit one quarterly. If this expenditure expectation is not met, the Department reserves the right to mandate a corrective action or remediation plan to ensure future timely expenditure of ESG funds. (24 CFR 576.203)
- F. HCD may establish minimum disbursement amounts or other related procedures necessary for the efficient administration of the ESG program.
- G. Expenditure Milestone Expectations
  - 1) Contractor must expend at least 50 percent of their award 6 months prior to the expenditure deadline referenced in Exhibit E.
  - 2) Should the Contractor not meet the expenditure milestone, The Department, in its sole and absolute discretion, reserves the right to recapture unexpended funds.
  - 3) Expenditure Milestone Expectations are described in Exhibit E, Provision Ex. A – E.3
- H. Deadlines for Obligating Funds
  - 1) Within 60 days from the date that HUD signs the grant agreement with the State (or grant amendment for reallocated funds), the recipient must obligate the entire grant, except the amount for its administrative costs. This requirement is met by a subgrant agreement with, or a letter of award requiring payment from the grant to, a Contractor.
  - 2) Within 120 days after the date that the State obligates its funds to a unit of general-purpose local government, the Contractor must obligate all of those funds by a subgrant agreement with, or a letter of award requiring payment to, a private nonprofit organization; a procurement contract; or

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the written designation of a department within the government of the Contractor to directly carry out an eligible activity.

I. Expenditures

The recipient must draw down and expend funds from each year's grant not less than once during each quarter of the recipient's program year. All of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient. For the purposes of this paragraph, expenditure means either an actual cash disbursement for a direct charge for a good or service or an indirect cost or the accrual of a direct charge for a good or service or an indirect cost.

J. Payments to Contractors

The recipient must pay each Contractor for allowable costs within 30 days after receiving the Contractor's complete payment request. This requirement also applies to each Contractor that is a unit of general-purpose local government.

K. The Department may impose sanctions, as well as any other remedies available to it under law, on a Contractor for failure to abide by any State and federal laws and regulations applicable to the ESG program. As the Department deems appropriate or necessary, sanctions include, without limitation, any or all of the following:

- 1) Conditioning a future ESG grant on compliance with specific laws or regulations;
- 2) Directing a Contractor to stop incurring costs under the current grant;
- 3) Requiring that some or all of the grant amounts be remitted to the Department;
- 4) Reducing the amount of grant funds, a Contractor would otherwise be entitled to receive;
- 5) Electing not to award future grant funds to a Contractor and prohibiting an Administrative Entity from awarding to a particular Contractor of the Administrative Entity until appropriate actions are taken to ensure compliance with ESG requirements; and/or;



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- 6) Taking any other actions permitted pursuant to 24 CFR 576.501 and 25 CCR Section 8416.

**5. Scope of Work Revisions and Amendments**

- A. Contract Revisions: Adjustments to the Scope of Work that do not require an increase or reduction of activity scope, or a change in the type of beneficiaries assisted may be completed as a Contract Revision. Contract Revisions must be approved by the Department in writing prior to implementation. If approved, Contract Revisions shall automatically be deemed a part of, and incorporated into, this Agreement. Approval shall be provided either through the online grant management system, or in writing, as appropriate. Contract Revisions shall include but not be limited to:
  - 1) Budget revisions which do not change the total award amount.
  - 2) Changes to the Authorized Representative supported by the Resolution of the Authorizing Board
  - 3) Proposals make by the Administrative Entity to change the funded provider or eligible activity consistent with 25 CCR 8403, if necessary, to meet the requirements of this Chapter or to expend its funding allocation. Any change must still comply with the requirements of 25 CCR 8408 and 25 CCR 8409.
  - 4) Line-item changes to the budget provided that the Contractor notifies the Department of the need for changes to update IDIS.
- B. Line-item changes representing more than 25 percent of the overall budget requires a contract amendment as referenced in 25 CCR 8408, 25 CCR 8409, and 25 CCR 8411.

**6. ESG Program Contract Management**

- A. Department Contract Manager: For purposes of this Contract the ESG Program Contract Manager for the Department is the Program Manager of the ESG Program in the Division of Federal Financial Assistance, or such person's designee. Written communication regarding this Contract shall be directed to the ESG Program Representative at the following address:

Department of Housing and Community Development

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Division of Financial Assistance, Federal Programs Branch  
Emergency Solutions Grants Program Representative  
2020 West El Camino Ave, Suite 200  
Sacramento, California 95822  
Email: [ESGNOFA@hcd.ca.gov](mailto:ESGNOFA@hcd.ca.gov)

- B. Contract Management: Day-to-day administration of this Contract shall take place through the eCivis online grant management system, including, but not limited to:
- 1) Requests for Funds and Detailed Expense Forms;
  - 2) Budget Revision Forms;
  - 3) Annual Reports;
  - 4) Submittal of any and all requested supporting documentation;
  - 5) Standard Agreement Revisions (non-material contract changes);
  - 6) Standard Agreement Amendments (material contract changes).
- C. Contract Administrator: The Contract Administrator must be a contractor's employee as identified in Exhibit E Provision Ex. A – E.4, Profile. Any notice, report, or other communication required by this Contract shall be directed to the Contract Administrator at the contact information identified in Exhibit E Provision Ex. A – E.4, Profile. Written communication shall be directed to the Contract Administrator as identified in the Contractor Profile as referenced in Exhibit E Provision Ex. A – E.4.

**7. Capacity to Contract**

Contractor has the capacity and authority to fulfill the obligations required of and nothing prohibits or restricts the right or ability of Contractor to carry out the terms hereof.

**8. Authority to Execute**

Each Party executing this Agreement represents that it is authorized to execute this Agreement. Each person executing this Agreement on behalf of an entity, other than an individual executing this Agreement on their own behalf, represents that they are authorized to execute this Agreement on behalf of said entity.

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**9. Contractor's Contract Coordinators**

Contractor's Authorized Representative for the Contract is identified in Exhibit E.  
Unless otherwise informed, any notice, report or other communication required by this  
Contract will be mailed by first class mail to the address as shown in Exhibit E.  
Provision Ex. A – E.4

**EXHIBIT B**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Budget**

Budget Detail: ESG funds shall be used for the activities as detailed in Exhibit E Provision Ex. A – E.1 of this Agreement, as described under federal ESG regulations at 24 CFR Part 576, Subpart B – Program Components and Eligible Activities and Title XII, Homeless Assistance Section.

**2. Availability of Funds**

The Department's provision of funding to Contractor pursuant to this Agreement is contingent on the continued availability of ESG funds and continued federal authorization for ESG activities, as well as the conditions set forth in Exhibit D, Section 3. The Department's provision of funding is subject to amendment or termination due to lack of funds or proper authorization. This Agreement is subject to written modification or termination, as necessary, by the Department in accordance with requirements contained in any future state or federal legislation and/or state or federal regulations. All other modifications must be in written form and approved by both parties.

**3. Method of Payment**

Payments to Contractor shall be made on a reimbursement basis with the exception that a Contractor may request an operating advance of \$5,000.00-, or 30-days working capital, whichever is greater. A request for an operating advance must be received by the Department within sixty (60) days of the Effective Date of this Agreement. To receive payment for the Work performed, or to receive an operating advance, the Contractor must submit, on forms provided by the Department, a duly executed ESG Request for Funds (RFF). The Contractor shall submit all RFFs to the Department, as referenced in Exhibit A, Section 6 via the online eCivis Grants Network portal. Each Request for Funds (RFF) must also be accompanied by a completed Detailed Expense Report (DER) as provided by the Department. The Department shall not authorize payments unless it determines that the Work has been performed in compliance with the terms of this Agreement. Contractor shall not receive an operating advance or be reimbursed for expenditures incurred prior to the Effective Date of this Agreement, unless otherwise approved by the Department pursuant to Exhibit D, Section 3 Reimbursements will not be made after this Contract expires.

All Requests for Funds shall include expenditure detail. Pursuant to 24 CFR 576.201, all Requests for Funds are required to show match documentation which includes match source and amount. Contractor also certifies that detailed supporting documentation

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verifying each expenditure is available and shall be retained by the Contractor for five (5) years after the Department closes its HUD grant.

NOTE: Record retention is based on *the Department's HUD closing date; NOT five (5) years from this Agreement expiration.* The retention requirement can extend beyond five (5) years after this Agreement expires. Therefore, the Contractor must contact the Department for the specific record retention date for this Agreement.

Contractor shall not be reimbursed for expenditures incurred after the expiration date of this Agreement, as set forth in Exhibit E, Provision Ex. A - E.2.

### 4. Budget Changes

After the Effective Date of this Agreement, no changes shall be made to the program budget, funded homeless service providers, or eligible activities without prior written approval from the Department. Any changes to this Agreement must be made in writing and approved by both the Department and the Contractor. The proposed change/s must be consistent with 24 CFR 576.500(y).

Contractor agrees to notify the Department in writing of any line-item changes to the budget needed for the Department to update the federal Integrated Disbursement and Information System (IDIS). For line-item changes representing more than 25 percent of the overall project budget, a contract amendment is required (25 CCR 8411).

### 5. Ineligible Costs

- A. ESG funds shall not be used for costs associated with activities in violation of any law or for any activities considered ineligible per 24 CFR 576. The Department reserves the right to request additional information and clarification to determine the reasonableness, necessity, and eligibility of all costs to be paid with ESG funds made available by this Agreement. If Contractor or its funded service providers use ESG funds for the costs of ineligible activities, Contractor shall be required to reimburse these funds to the Department immediately. Further, Contractor shall be prohibited from applying to the Department for subsequent ESG funds until the Department is fully reimbursed.
- B. An expenditure which is not authorized by this Contract, or which cannot be adequately documented, must be immediately repaid to the Department or its designee, by the Contractor. Expenditures for work, not described in Exhibit A, Section 1, shall be deemed authorized only if the performance of such work is approved in writing by the Department prior to the commencement of such work.

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- C. The Department, at its sole and reasonable discretion, shall make the final determination regarding the allowability of expenditures.
- D. Pursuant to State ESG Regulations 25 CCR 8408(d), funds shall not be used for Renovation, Conversion, Major Rehabilitation activities as defined in 24 CFR 576.2, and 576.102. Minor repairs to an ESG-funded Emergency shelter that do not qualify as Renovation, Conversion or Major Rehabilitation are an eligible use of State ESG funds.

**6. Indirect Costs**

Contractors and/or service providers will allow their providers to seek reimbursement for indirect costs. The applicant must:

- A. Comply with all OMB requirements and standards including 2 CFR 200.403, 200.415, and Part 200 Appendix IV.
- B. Certify that any providers seeking reimbursement for indirect costs at the de minimis rate of 10%, do not meet the definition of a major nonprofit organization as defined by OMB 2 CFR 200.414.
- C. Maintain records including evidence of the Modified Total Direct Cost (MTDC), per 2 CFR 200.68 calculations, indirect cost limits, and supporting documentation for actual direct cost billing.
- D. Pursuant to 2 CFR 200.331(a)(4), the Indirect Cost Rate for the Subrecipient shall be an approved federally recognized indirect cost rate negotiated between the Subrecipient and the Federal government, or, if no such rate exists, the De Minimis indirect cost rate as defined in 2 CFR 200.414(b) Indirect (F&A) costs. Indirect costs may be allocated to each eligible activity under 24 CFR 576.101 through Section 576.108, so long as that allocation is consistent with 2 CFR Part 200, Subpart E. Subrecipient shall maintain records including evidence of the Modified Total Direct Cost (MTDC), per 2 CFR 200.68 calculations, indirect cost limits, and supporting documentation for actual direct cost billing.

**7. Duplication of Benefits**

Pursuant to both Federal and State law all ESG costs must be: (1) necessary (2) reasonable (3) if applicable, there can be no duplication of benefit (4) ESG funds cannot be used to supplant local or state resources, and (5) Applicant must guard against fraud

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(see section 35 in Exhibit D) and ineligible uses of ESG funds and (See 24 CFR 576.1; Housing (HEARTH) Act of 2009 SEC. 402 (f)(3)(A), 24 CFR 576.107(3)(a), 24 CFR 576.400(f) .

**8. Compatibility of Program Funds**

It is the duty and responsibility of each Applicant to review the provisions, requirements, and limitations of all funding sources applied for and obtained for a particular project, program, or activity in order to ensure that each and every requirement of those funding sources is compatible with all HCD program requirements and restrictions. Incompatibility of funding sources will result in the denial or cancellation of an award or may result in the placement of conditions or limitations on an award, all as determined by HCD in its sole and absolute discretion.

**EXHIBIT D**

**ESG PROGRAM TERMS AND CONDITIONS**

**1. Federal Grant Identification**

HUD Grant No: E-23-DC-06-0001

CFDA Number: 14.231

Date HUD Grant Agreement Signed: August 18, 2023

**2. Definitions**

- A. In addition to the definitions found in 42 USC section 11371 (section 411) and 24 CFR section 576.3, the following definitions shall apply to this subchapter:
- 1) "Action Plan" means the annual plan required by HUD pursuant to 24 CFR Part 91 governing the distribution and use of ESG funds allocated by HUD to states and local governments.
  - 2) "Administrative activities" is defined at 24 CFR 576.108.
  - 3) "Administrative Entity" means a Unit of general-purpose local government approved by the Department pursuant to 25 CCR 8403 to administer State ESG funds.
  - 4) "Application" means Contractor's ESG application submitted in response to the ESG NOFA.
  - 5) "At Risk of Homelessness" as defined in 24 CFR 576.2.
  - 6) "Balance of State Allocation" means funds allocated pursuant to the requirements of 25 CCR sections 8404 through 8407.
  - 7) "City" is defined at 42 USC section 5302(a)(5).
  - 8) "Continuum of Care" is defined under 24 CFR 576.2. means the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim Service Providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social Service Providers; mental health agencies; hospitals; universities; affordable housing developers; law

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enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

- 9) "Continuum of Care Service Area" means the entire geographic area within the boundaries of an Eligible Continuum of Care.
- 10) "Contract" see "Standard Agreement" defined below.
- 11) "Contractor" means a state law contractor entity that enters into a Standard Agreement (STD 213) with the Department for ESG funds, per (State Contracting Manual, Glossary; 25 CCR 8401), and becomes a federally defined subrecipient under 24 CFR 576.2 Definitions, see 2 CFR 200.1, but not a federally defined contractor under 2 CFR 200.331. Subrecipient is often used synonymously with contractor.
- 12) "Coordinated Entry" means the system of program access, needs assessment and prioritization developed by a Continuum of Care pursuant to 24 CFR 576.400 (d), and associated HUD requirements and guidance. This term is also known as "Coordinated Entry System", "Coordinated Assessment" or "Centralized Assessment".
- 13) "Core Practices" means the practices and protocols of delivering ESG Eligible activities as specified in 24 CFR 576.
- 14) "Department" means the California Department of Housing and Community Development.
- 15) "ESG" is the acronym for the Emergency Solutions Grants program.
- 16) "Eligible Activities" mean those activities upon which ESG funds may be expended as defined under 24 CFR 576, Subpart B. Additionally, Eligible Activities may include or be limited by the State ESG Regulations, as applicable.
- 17) "Eligible Continuum of Care" means a Continuum of Care in the State that has within its Service Area at least one Non-Entitlement Area.

**EXHIBIT D**

- 18) "Eligible Organization" means a Private Nonprofit Organization or a Unit of General-Purpose Local Government that provides, or contracts with Private Nonprofit Organizations to provide Eligible Activities.
- 19) "Emergency Shelter" is any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless and which does not require occupants to sign leases or occupancy agreements. Any project funded as an emergency shelter under a Fiscal Year 2010 Emergency Solutions grant may continue to be funded under ESG. 24 CFR 576.2.
- 20) "ESG Entitlement" means a Unit of General-Purpose Local Government that meets one of the following:
  - a) is a Metropolitan City or Urban County as defined under 42 U.S.C. 5302 that receives an allocation of ESG funds directly from HUD;
  - b) is in a Non-Entitlement Area that has entered into an agreement with an Urban County to participate in that locality's ESG program, or
  - c) is a Metropolitan City or Urban County that have entered into a joint agreement with one another to receive and administer a combined direct allocation of ESG funds from HUD.
- 21) "ESG Entitlement Area" or "Entitlement Area" means the geography within an ESG Entitlement's boundaries.
- 22) "ESG Non-Entitlement" means a Unit of General-Purpose Local Government that does not receive ESG funding directly from HUD and is not participating as an ESG Entitlement Area.
- 23) "ESG Non-entitlement Area" means the geography within an ESG Non-Entitlement's boundaries.
- 24) "Governing Board" means Board of Supervisors for a County applicant and means City Council for a city applicant.
- 25) "HMIS" means Homeless Management Information System as defined under 24 CFR 576.2. Use of the term "HMIS" within these regulations shall also include use of a comparable database, as permitted by HUD under 24 CFR Part 576.

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- 26) "Homeless" is defined at 24 CFR 576.2.
- 27) "Homelessness Prevention Activities" means activities or programs described in 24 CFR 576.103.
- 28) "HUD" means the United States Department of Housing and Urban Development.
- 29) "NOFA" is the acronym for a "Notice of Funding Availability."
- 30) "Non-entitlement Area" is defined means an area which is not a metropolitan city or part of an urban county and does not include Indian tribes. 42 USC 5302(7).
- 31) "Operations" means the category of ESG activities that includes shelter maintenance, operation, rent, repairs, security, fuel, equipment, insurance, utilities, food, and furnishings.
- 32) "Private Nonprofit Organization" is defined at 24 CFR 576.2.
- 33) "Program" shall mean the Emergency Solutions Grants Program ("ESG").
- 34) "Rapid Re-Housing" means the activities to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing. (24 CFR 576.104).
- 35) "Service Area" has the same meaning as the term "Continuum of Care Service Area".
- 36) "Service Providers" refer to "continuum of care" definition above.
- 37) "Site" means one or more facilities where the program(s) is being carried out.
- 38) "Site Control" means the legal right to occupy and use the Site, as evidenced by such things as:
  - a) a deed demonstrating ownership in fee title;

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- b) a lease demonstrating a leasehold interest in the Site and its improvements for at least the term of the ESG grant,
  - c) an enforceable option to purchase or lease a site provided that such option will be for at least the term of the ESG grant or
  - d) for rotating shelter programs, Site Control may include other evidence provided by the applicant granting permission to use the site(s). Such evidence must be approved by the Department in writing prior to the deadline for submission of the ESG applications stated in the applicable NOFA.
- 39) "Standard Agreement" means the contract entered into by the Department and the ESG Administrative Entity (also known as Contractor) setting forth the basic terms and conditions governing the awards of ESG funds.
- 40) "Subrecipient" means an entity that enters into a Standard Agreement with the Department for general-purpose local government or private nonprofit organization to which a recipient makes available ESG funds. (25 CCR 8401). (24 CFR 576.2) Throughout this Standard Agreement is referred to as Contractor.
- 41) "Subcontractor" means an entity that is performing work as shown under 24 CFR 576.100(A) as described in Exhibit A, Section 2 ESG funds for a Contractor or Service Provider.
- 42) "Unit of General-Purpose Local Government" refer to 19 above. 24 CFR 576.2.
- 43) "Written Standards" means the standards, policies, and procedures adopted by an Administrative Entity for providing ESG Eligible Activities pursuant to the requirements of 24 CFR 576.400 (e).

Note: Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 USC 5302, 42 USC 11302, 42 USC 11371, 42 USC 11373, 24 CFR 576.3, 24 CFR 576.400, and CFR 576.2.

**3. Eligible Activities**

ESG funds awarded to the Contractor shall be used for the Eligible Activities set forth in Exhibits B and D, as permitted under the federal ESG regulations at 24 CFR Part 576. The following additional provisions or requirements shall apply:

Emergency Solutions Grants Program (ESG)  
Continuum of Care (AE) Allocation  
NOFA Dates: 8/15/2023  
Approve Date: 11/21/2023  
Prep. Date: 12/22/2023

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- A. For Rapid Re-Housing (RR) and Homelessness Prevention (HP) activities, no subpopulation targeting will be permitted, except if documentation of all of the following is provided to the Department prior to the award of funds for these activities and is approved by the Department:
- 1) Evidence that there is an unmet need for these activities for the subpopulation proposed for targeting.
  - 2) Evidence that there is existing funding in the Continuum of Care Service Area for programs that address the needs of the excluded populations for these activities.
- B. Pursuant to 2 CFR 200.414(f) OMB requirements, Contractor may permit homeless service providers receiving ESG funds to charge an indirect cost allocation to their grant. The indirect cost allocation may not exceed ten percent (de-minimis) of the allowable direct costs under the ESG activity unless a higher limit for the indirect cost allocation has been approved by the applicable Federal agency pursuant to OMB requirements. Indirect Costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective or activity.
- C. Contractor shall receive a portion of its ESG grant allocation for the payment of administrative costs. The amounts available for administrative activities will be announced in the Annual Action Plan and NOFA.
- D. Rental assistance payments provided as part of an RR or HP activity under 24 CFR Part 576.106 cannot exceed HUD's Fair Market Rent (FMR) as provided under 24 CFR Part 888 and must comply with HUD's standard for rent reasonableness as established under 24 CFR Part 982.507. Contact your HCD representative in the Federal Programs Branch for further assistance.
- E. All provisions of 24 CFR 576 and CCR Title 25, Division 1, Chapter 7 shall apply including, but not limited to the following:
- 1) The maximum allocation spending cap on Emergency Shelter and street outreach activities of 60 percent of the aggregate amount of assistance provided for the contractor established pursuant to 24 CFR 576.100(b).
  - 2) None of the ESG funds provided may be used to require people experiencing homelessness to receive treatment or perform any other

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prerequisite activities as a condition for receiving shelter.

- 3) A maximum of 10 percent of the funds provided under this Agreement may be used for Homeless Management Information System (HMIS) activities as set forth in the Annual Action Plan.
- 4) ESG funds shall not be used for Renovation, Conversion, or Major Rehabilitation activities pursuant to 24 CFR 576.102. Minor repairs to an ESG funded Emergency Shelter that do not qualify as Renovation, Conversion, or Major Rehabilitation are an eligible use of ESG funds (25 CCR 8408(d)).
- 5) No less than 40 percent of the total funds available to the Contractor must be awarded to Rapid Re-Housing.
- 6) Administrative Entities partnering with a neighboring Continuum of Care from the Balance of State Allocation must award one hundred percent (100%) of both Service Area formula allocations to Rapid Re-Housing.
- 7) For Rapid Re-Housing and Homelessness prevention activities, no subpopulation targeting will be permitted except if documentation of all of the following is provided to the Department prior to the award of funds for these activities:
  - a) that there is an unmet need for these activities for the subpopulation proposed for targeting, and
  - b) that there is existing funding in the Continuum of Care Service Area for programs that address the needs of the excluded populations for these activities.

**4. State Contracting Manual Requirements (Section 3.11, Federally Funded Contracts (Rev. 3/03))**

All contracts, except for State construction projects that are funded in whole or in part by the Federal government, must contain a 30-day cancellation clause and the following provisions:

Emergency Solutions Grants Program (ESG)  
Continuum of Care (AE) Allocation  
NOFA Dates: 8/15/2023  
Approve Date: 11/21/2023  
Prep. Date: 12/22/2023

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- A. It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid Program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the purpose of this Program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by Congress or to any statute enacted by Congress that may affect the provisions, terms, or funding of this contract in any manner.
- C. The parties mutually agree that if Congress does not appropriate sufficient funds for the Program, this Agreement shall be amended to reflect any reduction in funds.
- D. The Department has the option to invalidate the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction in funds.

**5. Sufficiency of Funds and Termination**

- A. The Department may terminate this Agreement at any time for cause by giving a minimum of 14 days' notice of termination, in writing, to the Contractor. Cause shall consist of violations of any terms and/or special conditions of this Agreement; the Federal Statutes; the Federal Regulations; the State Regulations; withdrawal of the Department's expenditure authority. Upon termination of this Agreement, unless otherwise approved in writing by the Department, any unexpended funds received by the Contractor shall be returned to the Department within 30 days of the Notice of Termination.
- B. This Agreement may have been written before determining the availability of congressional appropriation of funds. It is mutually understood between the parties that this Agreement is written for the mutual benefit of both parties to avoid program and fiscal delays.
- C. This Agreement is valid and enforceable only if sufficient funds are made available to the Department by the United States Government for the purposes of this Program. In addition, this Agreement is subject to any additional restrictions, limitations or conditions, or statute, regulations or any other laws, whether federal or of the State of California, or of any agency, department, or any political subdivision of the federal or the State of California governments, which may

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- affect the provisions, terms or funding of this Agreement in any manner.
- D. It is mutually agreed that if Congress does not appropriate sufficient funds for the Program, this Agreement shall be amended to reflect any reductions in funds.
  - E. The Department has the option to terminate this Agreement under the 30-day cancellation clause or to amend this Agreement to reflect any reduction of funds.
  - F. Contractor shall administer termination of assistance in accordance with 24 CFR 576.402.

**6. Transfers**

Contractor may not transfer by subcontract or novation, or by any other means, the rights, duties, or performance of this Agreement or any part thereof, except with the prior written approval of the Department and a formal amendment to this Agreement to affect such subcontract or novation.

**7. Contractors and Service Providers**

- A. Contractor, or its Service Providers, shall not enter into any Agreement, written or oral, with any subcontractor without the prior written determination by the Department of the Contractor's eligibility. A Contractor or Service Provider is not eligible to receive grant funds if the subcontractor is not licensed and in good standing in California or is listed on the Federal Consolidated List of Debarred, Suspended and Ineligible Contractors.
- B. Any party to a third-party agreement between the Contractor Subrecipient or Service Provider, and any contractor or subcontractor hired by the Subrecipient, or Service Provider shall require the contractor or subcontractor, if any, to do the following:
  - 1) Perform the Work in accordance with Federal, State and local housing, and building codes, as applicable.
  - 2) Comply with the labor standards described in this Exhibit, Section 21, as applicable. In addition to the requirements of this Exhibit, all contractors and subcontractors must comply with the provisions of the California Labor Code, as applicable.
  - 3) Comply with the applicable Equal Opportunity Requirements, described in this Exhibit, Section 15.



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- 4) Maintain at least the minimum State-required worker's compensation insurance for those employees who will perform the Work or any part of it.
  - 5) Maintain, as required by law, unemployment insurance, disability insurance, and liability insurance in an amount to be determined by the Department, 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 Work or any part of it. Such insurance shall be endorsed to include a waiver of subrogation rights against the Department its officers, officials, employees, volunteers, agents, and representatives. Such policies shall be written by California licensed insurers with Best ratings of not less than A: VII in the most recent edition of Best Rating Guide.
  - 6) Contractor agrees to include all the terms of this Contract in each subcontract and the Department shall have no liability for Subrecipient's failure to comply with this obligation.
- C. The Department reserves the right of pre-award review and approval of all proposed contracts and related procurement documents, such as requests for proposals and invitations for bids, where the subcontract amount exceeds \$25,000.00.

**8. Core Practices**

- A. All ESG funded activities shall operate in a manner consistent with ESG requirements and perform all services in a competent, professional, and first-class manner and to the satisfaction of the Department.
- B. All Service Providers receiving ESG funds shall take actions to create an effective, welcoming, and affirming environment for all program participants and employees, including, but not limited to, persons of different races, ethnicities, sexual orientations, gender identities, and gender expressions.
- C. The Contractor will establish and implement to the maximum extent practicable and where appropriate, protocols, policies, and procedures for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, mental health facilities, foster care or other youth facilities or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons.

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- D. The Contractor will develop and implement procedures to ensure the confidentiality and protection of all records containing personally identifying information of any individual or family who applies for and/or receives ESG assistance. Furthermore, the records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, must be protected against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of the shelter.
- E. If ESG funds are used for shelter operations or essential services related to street outreach or emergency shelter, the Contractor will ensure the Service Provider(s) will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long as the Contractor serves the same type of persons (e.g., families with children, unaccompanied youth, veterans, disabled individuals or victims of domestic violence) or persons in the same geographic area.
- F. The Contractor will ensure the Service Providers will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living) and other federal, state, local, and private assistance available for such individuals.
- G. If required, the Contractor shall have the sole and exclusive responsibility for providing relocation assistance and paying all relocation costs required to comply with all applicable federal and state laws, rules, and regulations, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 et seq., as amended and implementing regulations, and HUD Handbook 1378. Subrecipient shall indemnify, defend, and hold the Department harmless from and against any claims, liabilities, damages, or losses made against it by tenants or occupants of the Site, including without limitation claims for relocation assistance, inverse condemnation, and claims otherwise arising from any act or omission of Subrecipient pursuant to the provision of relocation assistance.
- H. To the maximum extent practicable the Contractor and its Service Providers, will involve homeless individuals and families, through employment, volunteer services, or otherwise, in constructing, renovating, maintaining and operating facilities assisted under ESG and in providing services for occupants of facilities assisted by ESG.

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**9. Shelter and Housing Standards**

Emergency shelters must also meet the minimum safety, sanitation, and privacy standards at 24 CFR 576.403 (b), including but not limited to, accessibility standards in accordance with Section 504 of the Rehabilitation Act (29 USC 794) and implementing regulations at 24 CFR part 8, the Fair Housing Act (42 USC 3601 et seq.) and implementing regulations at 24 CFR part 100, Title II of the Americans with Disabilities Act (42 USC 12131 et seq.), and 28 CFR part 35, where applicable.

If Rapid Re-Housing or Homeless Prevention assistance is provided, the assisted housing must meet the minimum habitability standards at 24 CFR 576.403 (c).

**10. Inspections**

- A. Contractor shall inspect any Work performed hereunder to ensure that the Work is being and has been performed in accordance with the applicable Federal, State and/or local requirements and this Agreement.
- B. The Department reserves the right to inspect any Work performed hereunder to ensure that the Work is being and has been performed in accordance with the applicable Federal, State and/or local requirements, and this Agreement.
- C. Contractor agrees to require that all non-conforming Work be corrected and to withhold payments to the subrecipient or subcontractor until such Work is corrected.

**11. Monitoring Grant Activities**

- A. Contractor shall monitor the activities selected and awarded by them to ensure compliance with all ESG requirements. An onsite or desk monitoring of homeless Service Providers shall occur whenever determined necessary by the Contractor but at least once during the grant period.
- B. The Department will monitor the performance of the Contractor based on a risk assessment and according to the terms of this Agreement. The Department may also monitor any Service Providers of the Contractor as the Department deems appropriate based on a risk assessment.

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- C. The Department will monitor the performance of Contractor and funded projects based on the performance measures used by HUD in ESG or the (CoC) program. In the event that project-level or system-wide performance consistently remains in the lowest quartile compared to all participating Service Areas in the (CoC) allocation, the Department will work collaboratively with the Contractor to develop performance improvement plans which will be incorporated into this Standard Agreement.
- D. If it is determined that a Contractor or any of its Service Providers falsified any certification, application information, financial, or contract report, the Contractor shall be required to immediately reimburse the full amount of the ESG award to the Department and may be prohibited from any further participation in the ESG program. The Department may also impose any other actions permitted under 24 CFR 576.501(c).
- E. As requested by the Department, the Contractor shall submit to the Department all ESG monitoring documentation necessary to ensure that Contractor and its Service Providers are in continued compliance with all ESG requirements. Such documentation requirements and the submission deadline(s) shall be provided by the Department when the information is requested from the Contractor.
- F. Contractor and its Service Providers shall cooperate with the Department and shall make available to the Department all information, documents, and records reasonably requested. Copies of these items will also be made available to the Department upon their request. Subrecipient Contractor shall provide the Department the reasonable right of access to the Site during normal business hours for the purpose of assuring compliance with this Agreement and evaluating the Subrecipient's Contractor's performance.

**12. Compliance with Federal and State Laws and Regulations**

- A. The Contractor and its Service Providers shall comply with the policies, guidelines and requirements under 2 CFR, Part 200 and 25 CCR Division 1, Chapter 7, Subchapter 20 as applicable, as they relate to the cost principles, audit requirements, acceptance and use of federal funds under this 2 CFR, Part 200 and 25 CCR Division 1, Chapter 7, Subchapter 20.
- B. The Contractor agrees to comply with all federal and state laws and regulations applicable to the ESG Program and to the grant activity(ies), and with any other federal provisions as set forth in this Agreement. The Contractor agrees to

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comply with all federal and State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all others matters applicable to the Contractor its Service Providers or subcontractor and the Work. This includes, but is not limited to, complying with all relevant sections of 2 CFR Part 200.

- C. Contractor shall indemnify, protect, defend, and hold harmless the Department from and against any and all loss, liability, damage, claim, cost, and/or expense (including reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) that result or arises in any way from the noncompliance by Contractor or Service Provider personnel of any applicable local, state, and/or federal law or requirement.

### 13. Procurement of Goods and Services

Prior to the drawdown of ESG funds for the Contractor's purchase of goods or services, Subrecipient, shall comply with the Procurement Standards contained in 2 CFR 200.317-.326. Contractor when procuring goods with ESG funds, must provide the Department with evidence of compliance with these requirements, as applicable.

### 14. Procurement of Recovered Materials

Contractor and its Service Providers must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceed \$10,000.00 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### 15. Equal Opportunity Requirements and Responsibilities

- A. Title VI of the Civil Rights Act of 1964, as amended, including 24 CFR Part 1: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance. In regard to the sale or lease of a Site, Contractor shall cause or require a covenant running with the land to be inserted in the deed and leases

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prohibiting discrimination under this Title, and providing that State of California and the United States are beneficiaries of and entitled to enforce such covenants. Contractor shall enforce such covenant and shall not itself so discriminate.

- B. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- C. **Civil Rights Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- D. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- E. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- F. **Affirmatively Furthering Fair Housing (AFFH)**: The Fair Housing Act in 1968 prohibits discrimination in the sale, rental, and financing of housing based on race, religion, and national origin. Over time the law expanded its protections to include discrimination based on sex, disability, and familial status. The law also introduced the need to go beyond just prohibiting discrimination to instead creating real housing choice by affirmatively furthering fair housing. In 2018 California adopted AB 686 which expands upon the fair housing requirements and protections outlined in the Fair Employment and Housing Act (FEHA). The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development. AB 686

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creates new requirements that apply to all housing elements due for revision on or after January 1, 2021. Affirmatively Furthering Fair Housing requires taking meaningful actions to combat discrimination, overcome patterns of segregation, and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Jurisdictions must take meaningful actions that when taken together, address significant disparities in housing needs and access to opportunity. Such actions may include, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. (24 CFR parts 91, 92, 570, 574, 576, and 903)(24 CFR 5.151-24 CFR 5.152)

- 1) For ESG, AFFH requires collecting demographic data for the homeless population and analyzing it to develop more equitable ways to serve the homeless population. Please refer to the 2022 ESG CoC NOFA for additional guidance regarding this process.

- G. **Advancing Racial Equity**: Pursuant to direction from HUD, as provided at the links below, Contractors should prioritize the advancement of racial equity at all levels of the homeless response system. The Department asks Contractors to be leaders in their homeless response systems, facilitating partnerships among service organizations and promoting racial equity practices. Contractors must respond to disproportionality in access to services, service provision, and outcomes. Contractors cannot simply rely on delivering a standardization of services to address equity. Contractors have the responsibility to examine their data to ensure all eligible persons receive equitable services, support, and are served with dignity, respect, and compassion regardless of circumstances, ability, or identity.

The Department recommends that Contractors refer to and utilize the Racial Equity Tools available on the HUD Exchange to inform efforts to advance racial equity within the homeless response system. The tools are currently available at the following link: <https://www.hudexchange.info/news/new-coc-racial-equity-analysis-tool/>

The Department also encourages Contractors to refer to the Increasing Equity in the Homeless Response System through Expanding Procurement Tool from the HUD Exchange to help guide practices in this area at the following current link: [Advancing Racial Equity and Fair Housing Learning Brief - HUD Exchange](#)

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- H. **The Housing for Older Persons Act of 1995 (HOPA)**: Retained the requirement that the housing facilities must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. The act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 or older.
- I. **The Age Discrimination Act of 1975, as amended, including 24 CFR Part 146**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- J. **Section 504 of the Rehabilitation Act of 1973, as amended**: It is unlawful to discriminate based on disability or handicap in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of their disability or handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multifamily dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991. Subrecipient must ensure that its programs are accessible to and usable by persons with disabilities in accordance with the implementing regulations at 24 CFR Part 8.
- K. **The Americans with Disabilities Act of 1990 (ADA), as amended**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment by state and local governments and in places of public accommodations and commercial facilities. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment. The ADA also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. The Act defines the range of conditions that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.
- L. **Executive Order 11063, as amended, including 24 CFR 107**: This executive



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order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government. This order and its implementing regulations include requirements that all actions necessary be taken to prevent discrimination because of race, color, religion, sex, or national origin, in the use, occupancy, sale, leasing, rental, or other disposition of property assisted with Federal loans, advances, grants or contributions.

- M. **Executive Order 11259**: This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- N. **The Equal Employment Opportunity Act**: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
- O. **The Immigration Reform and Control Act (IRCA) of 1986**: Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (19).
- P. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978**: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.
- Q. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002)**: This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.

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- R. **Executive Order 11246, as amended:** This executive order applies to all Grantees, Subrecipients, their contractors, and subcontractors. It provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin.
- S. **24 CFR Part 5, Subpart A:** The requirements at 24 CFR Part 5 are applicable including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a) and the housing counseling requirements at 24 CFR 5.111.
16. **The Training, Employment, and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance (Section 3)**

**Section 3 Compliance 24 CFR Part 75**

The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

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

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

**Definitions:**

Contractor means any entity entering into a contract with:

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

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

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

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

Professional services means non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

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

Public housing project is defined in 24 CFR 905.108.

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

Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC 1701u).

Section 3 business concern means:

- (1) A business concern meeting at least one of the following criteria, documented within the last six-month period:
  - (i) It is at least 51 percent owned and controlled by low- or very low-income persons;
  - (ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
  - (iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
- (2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

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

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

Section 3 worker means:

- (1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
- (i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
  - (ii) The worker is employed by a Section 3 business concern.
  - (iii) The worker is a Youth Build participant.
- (2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.
- (3) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

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

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

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

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

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

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

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

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

### Requirements

#### (A) *Employment and training.*

- (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.
- (2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this section should be given to:
  - (i) Section 3 workers residing within the service area or the neighborhood of the project, and
  - (ii) Participants in YouthBuild programs.

#### (B) *Contracting.*

- (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.
- (2) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this section should be given to:
  - (i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
  - (ii) YouthBuild programs.

### Reporting

#### (A) *Reporting of labor hours.*

- (1) For Section 3 projects, recipients must report in a manner prescribed by HUD:

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- (i) The total number of labor hours worked;
  - (ii) The total number of labor hours worked by Section 3 workers; and
  - (iii) The total number of labor hours worked by Targeted Section 3 workers.
- (2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.
- (3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors and subcontractors that the recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.
- (4) Recipients reporting under this section, as well as subrecipients, contractors and subcontractors who report to recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.
- (5) Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance-based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

*(B) Additional reporting if Section 3 benchmarks are not met.*

If the recipient's reporting under paragraph (a) of this section indicates that the recipient has not met the Section 3 benchmarks described in § 75.23, the recipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

If the benchmarks are not met for Section 3 compliance, the Contractor must document their efforts to attract and employ workers that meet section 3 eligibility requirements.

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Below is a sample list of some of the actions a contractor could take to demonstrate their attempts. Documentation is required so support the actions.

- (1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- (2) Provided training or apprenticeship opportunities.
- (3) Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- (4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- (5) Held one or more job fairs.
- (6) Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
- (7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
- (8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- (9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
- (10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- (11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- (12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- (13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- (14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

### 17. Affirmative Outreach

- A. Contractor or its Service Providers must make known that the use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is

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unlikely that the procedures the Contractor or its service providers intend to use to make known the availability of its facilities, assistance, and services will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability, who may qualify for those facilities and services, the Subrecipient or its service providers must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services.

- B. Contractors and Service Providers must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, Subrecipients and Service Providers are also required to take reasonable steps to ensure meaningful access to programs and activities for Limited English Proficiency (LEP) persons.

### **18. Equal Access for Disabilities**

- A. Contractors must provide a language access plan that makes appropriate accommodations for LEP interpretive services and services that support the visually impaired as required by Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794 (contractors receiving federal financial assistance), in conjunction with section 508 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794d (created the U.S. Access Board to regulate websites, electronic information and communication technology (EICT) accessibility); Section 255, of the Communications Act of 1934, as amended; 24 CFR Part 8, including sections 8.3 and 8.4; and 36 CFR Part 1194, 36 CFR §§ 1194.1, 1194.2, and Appendices B and C to Part 1194 (accessibility standards for disabled to communication technology); see U.S. Access Board website;
- B. Achieving Compliance: The California State Dept. of Rehabilitation maintains an Assistive Technology website with resources for services to achieve compliance with recognized standards for non-discriminatory accessibility.

### **19. Environmental Requirements**

- A. By execution of this Agreement, the Contractor agrees to assume responsibility for environmental review, decision-making, and action under 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities" and shall comply with the environmental requirements of 24



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CFR Part 58 including §58.4 "Assumption Authority." The obligation of funds and incurring of costs is hereby conditioned upon compliance with 24 CFR Part 58, and completion by HCD of all applicable review and approval requirements.

- B. The Contractor, its Service Providers, and any Subcontractors of the Contractor or service provider, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project, or commit or expend ESG or local funds for eligible activities under this part, until the Contractor has performed an environmental review under 24 CFR Part 58 and the Contractor has received HCD approval if required by the level of environmental review.
- C. In accordance with 24 CFR 58.22, "Limitations on activities pending clearance" neither a Contractor nor any Service Provider in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in 24 CFR Section 58.1(b) on an activity or project until the environmental review process is complete and if required, HCD has approved the Contractor's HUD Form 7015.5 "Request for Release of Funds and Certification" (RROF) and issued HUD Form 7015.16, "Authority to Use Grant Funds". Neither a Contractor nor any Service Provider in the development process may commit non-HUD funds or undertake an activity or project that would have an adverse environmental impact or limit the choice of reasonable alternatives. Upon completion of environmental review, HCD shall notify Contractor. HUD funds shall not be utilized before this requirement is satisfied. Violation of 24 CFR Part 58 may result in disapproval, modification, or cancellation of the ESG Grant.
- D. If a project or activity is exempt under 24 CFR § 58.34, "Exempt activities" or is categorically excluded (except in extraordinary circumstances) under 24 CFR § 58.35(b) "Categorical exclusions not subject to §58.5", no RROF is required, and the recipient may undertake the activity immediately after the Contractor has provided documentation to HCD of its determination that each activity or project is exempt or categorically excluded. The Contractor remains responsible for carrying out any applicable requirements under §58.6, "Other Requirements" and must provide documentation to HCD at the time of grant monitoring of its compliance with this section of 24 CFR Part 58.
- E. By execution of this Agreement, the Contractor is also subject to the provisions of the California Environmental Quality Act (CEQA). Contractor assumes responsibility to fully comply with CEQA's requirements regarding the Work.

**20. Clean Air and Water Acts**

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This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR, Part 5050, as amended from time to time.

### 21. Lead-Based Paint Hazards

The assistance provided under this Agreement is subject to the Lead-Based Paint Poisoning Prevention Act (42 USC 4821 – 4845), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851 - 4856). Activities performed with the assistance provided under this Agreement are subject to 24 CFR, Part 35.

### 22. Labor Standards

- A. Pursuant to 24 USC 576.107 (e,) Davis-Bacon Act does not apply to the ESG program.
- B. Federal Regulations see The Fair Labor Standards Act (FLSA) 29 USC §§ 201-219

### 23. Matching Funds

The matching requirements of 24 CFR 576.201 shall apply to this activity. The Department requires the Subrecipient to provide a 1:1 match for all ESG expenditures. The eligible forms of matching contributions are defined at 24 CFR 576.201(d). Program income may be used as matching contributions, subject to the requirements at 24 CFR 576.201.

### 24. Assurance of Compliance with the “Violence Against Women Reauthorization Act of 2022” (VAWA) (S.3623 - 117th Congress (2021-2022) (as amended or reauthorized) Title VI - Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking – Sec. 601-603. See also 81 FR 80803, Nov16, 2016.

VAWA provides housing protections for survivors of domestic and dating violence, sexual assault, and stalking when it comes to finding and keeping a home, they can feel safe in. VAWA applies for all victims of domestic violence, dating violence, sexual

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assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistently with all nondiscrimination and fair housing requirements.

VAWA now expands housing protections to HUD programs beyond HUD's public housing program and HUD's tenant-based and project-based Section 8 programs. VAWA now provides enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking. During the performance of this Agreement, the Contractor shall ensure that all requirements of VAWA are complied with, including but not limited to:

- A. Domestic Violence survivors are not denied assistance as an applicant, or evicted or have assistance terminated as a tenant, because the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, and stalking.
- B. It will implement an 'emergency transfer plan', which allows for domestic violence survivors to move to another safe and available unit if they fear for their life and safety.
- C. It will provide "Protections against denials, terminations, and evictions that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy."
- D. It will implement a 'Low-barrier certification process' where a domestic violence survivor need only to self-certify in order to document the domestic violence, dating violence, sexual assault, or stalking, ensuring third party documentation does not cause a barrier in a survivor expressing their rights and receiving the protections needed to keep themselves safe.
- E. It will include all protections that apply to program participants under 24 CFR Part 5, subpart L, as supplemented by 24 CFR 576.409, except for the emergency transfer plan requirements under 24 CFR 5.2005(e) and 24 CFR 576.409(d).
- F. If implementing a rental assistance program and the housing is not assisted under another "covered housing program" as defined in 24 CFR 5.2003, the agreement may provide that the owner's obligations under 24 CFR Part 5, Subpart L, expire at the end of the rental assistance period. Each lease shall incorporate a lease addendum that includes all requirements that apply to the tenants, owner, or lease under 24 CFR Part 5 Subpart L, as supplemented by 24

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CFR 576.409, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c).

**25. Liability Insurance**

Unless otherwise approved in writing, Contractor shall have and maintain in full force and effect during the term(s) of this Agreement liability insurance in an amount of not less than \$1,000,000.00 per occurrence with the Department named as an additional insured. Prior to drawdown of funds, Contractor shall provide a valid certificate of insurance to the Department's Program Representative for review and approval.

**26. Reporting and Recordkeeping**

- A. Contractor shall keep and maintain records providing a full description of the activity(ies) undertaken. These include but are not limited to the following:
- 1) Records demonstrating that the activity(ies) meet the Emergency Solutions Grant program's national objective for which the ESG Grant is being provided;
  - 2) Records demonstrating the eligibility of the activities constituting the eligible program expenses;
  - 3) Records demonstrating compliance with this Agreement and the ESG Requirements;
  - 4) Data demonstrating client eligibility for services provided including the name, income level, family size of each client and other information for determining eligibility.
- B. A record of the services provided to each client, and such other records as may be reasonably required by the Department to allow the Department to evaluate the Contractor's operation of the program and compliance with the ESG Program and this Agreement.
- C. Records that allow the Department to comply with the Department's record keeping and reporting under the ESG Requirements. Contractor shall provide records that identify and account for the use of the ESG Grant proceeds and

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expenditures of all eligible program costs pertaining to this Agreement. Including without limitation, the records specified in 24 CFR 576.500, as they pertain to the activities under this Agreement.

- D. Books and records pertaining to the eligible program expenses shall be kept and prepared in accordance with generally accepted accounting principles or as otherwise required by HCD.
- E. By July 31 of each year, Contractor shall submit an Annual Performance Report to the Department. In accordance with federal reporting requirements, the report will include, but will not be limited to, beneficiary data, Minority Owned Business/Women Owned Business (MBE/WBE) data, and Section 3 data, if applicable.
- F. Contractor shall submit a Request for Funds (RFF) and Detailed Expense Report (DER) in a manner and format approved by the Department within thirty (30) days after the end of the State Mandated reporting period. Compliance reports shall be submitted as specified by the Department. Close-out-of-grant progress reports shall be submitted within sixty (60) days after the end of the reporting period.
- G. Contractor shall manage and maintain all client data information using a Homeless Management Information System (HMIS) or comparable data system (defined as a separate data system that collects required HMIS and ESG data elements and complies with HUD Data and Technical Standards).
- H. Contractor shall maintain all fiscal and program records pertaining to the ESG Grant for a period of five (5) years after the Department closes its HUD grant or any other period specified in 24 CFR 576.500 (y).
  - 1) NOTE: Record retention is based on the Department's HUD closing date; NOT five (5) years from this Agreement expiration. The retention requirement can extend beyond five (5) years after this Agreement expires. Therefore, the Contractor must contact the Department for the specific record retention date for this Agreement.
- I. Contractor shall submit required reports on forms approved by the Department.

### 27. Audit/Retention and Inspection of Records

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- A. Contractor agrees to maintain accounting books and records in accordance with Generally Accepted Accounting Principles, per 2 CFR 200.49 Contractor agrees that the Department, the Department of General Services, the Bureau of State Audits, the Department of Housing and Urban Development, or their designated representatives, shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for five (5) years after the Department closes its HUD grant or any other period specified in 24 CFR 576.500 (y).

NOTE: Record retention is based on the Department's HUD closing date; NOT five (5) years from this Agreement expiration. The retention requirement can extend beyond five (5) years after this Agreement expires. Therefore, the Contractor must contact the Department for the specific record retention date for this Agreement.

- B. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the Department to audit records and interview staff in any subcontract related to performance of this Agreement.
- C. Contractor receives federal funds that, in the aggregate, equal or exceed the threshold identified in the Uniform Administrative Requirements, the Contractor must have an annual single audit in compliance with the Single Audit Act of 1984, as amended and comply with 2 CFR Part 200, Subpart F. The audit shall be performed by a qualified State, local or independent auditor. Contractor shall notify the Department of the auditor's name and address immediately after the selection has been made. The contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers. Audits shall be submitted to the Department when completed but no later than nine months following the close of the fiscal year. Contractor shall take corrective actions on any issues noted during the audit within six months of the date of receipt of the reports. HCD shall consider sanctions as described in 2 CFR 200.505 if the Contractor is not in compliance with these audit requirements.
- D. Contractor, its Service Providers, and their subcontractors shall comply with the audit requirements contained in 2 CFR Part 200.

**28. Faith-Based Activities**

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Contractor and its Service Providers shall not require, as a condition of Program Participant housing, participation by Program Participants in any religious or philosophical ritual, service, meeting, or rite. Contractor and its Service Providers listed shall also comply with the requirements of 24 CFR 576.406 of the Federal Regulations.

**29. Interest of Members, Officers or Employees of Contractors, Members of Local Governing Body**

Pursuant to 24 CFR 576.404, in addition to the conflict-of-interest requirements in 2 CFR 200, no person:

- A. Who is an employee, agent, consultant, officer or elected or appointed official of the Contractor (or of any designated public agency); and,
- B. Who exercises or has exercised any functions or responsibilities with respect to assisted activities; or,
- C. Who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure or for 1 year thereafter. HUD may grant an exception to this exclusion as provided in 24 CFR 570.611 (d) and (e).
- D. Contractor shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the selection, award, and/or administration of contracts supported by Federal funds to ensure no conflict of interest, real or apparent, would be involved.

**30. Anti-Lobbying Certification**

- A. The Contractor shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant and that all Service Providers 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.
- B. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required

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certification shall be subject to a civil penalty of not less than \$10,000.00 and no more than \$100,000.00 for such failure.

- 1) No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 2) 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.

**31. Waivers**

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

**32. Litigation**

- A. If any provision of this Agreement, or any 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. Contractor shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement of 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



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**33. Sanctions**

The Department may impose sanctions, as well as any other remedies available to it under law, on Contractor or its Service Providers, for failure to abide by any State and Federal laws and regulations applicable to the ESG Program. Such sanctions include:

- A. Conditioning a future grant on compliance with specific laws of regulations;
- B. Directing Contractor or its Service Providers to stop incurring costs under the current grant;
- C. Requiring that some or the entire grant amount is remitted to the Department;
- D. Reducing or disencumbering some or all of the amount of grant funds Contractor would otherwise be entitled to receive;
- E. Electing not to award future grant funds to Contractor unless and until appropriate actions are taken by the Contractor to ensure compliance; and/or,
- F. Taking any other actions permitted pursuant to 24 CFR 576.501.

**34. Drug-Free Workplace Requirements**

The Contractor shall comply with and be subject to the requirements of the federal drug-free workplace requirements, which include the following actions be taken:

- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- B. Establishing an ongoing drug-free awareness program to inform employees about: (i) the dangers of drug abuse in the workplace; (ii) the Contractor's policy of maintaining a drug-free workplace; (iii) any available drug counseling, rehabilitation, and employee assistance programs; and (iv) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- C. Contractor and their Service Providers shall maintain a drug free environment on the Site. Contractor and their Service Providers pledge to the Department that all

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persons working or residing on the Site shall not unlawfully manufacture, distribute, dispense, possess, or use controlled substances, as said term is defined in 21 USC Section 812 and California Health and Safety Code Section 11007 (or successor statutes), including marijuana, heroin, cocaine, and amphetamines on the Site. If Contractor or any person working or residing on the Site is convicted or pleads guilty or nolo contendere to a charge of unlawfully manufacturing, distributing, dispensing, possessing, or using controlled substances on the Site, then such event shall constitute a default of this Agreement.

### 35. Area-wide System Coordination Requirements

The Contractor and their Service Providers agree to participate in the Homeless Management Information System (“HMIS”), or comparable database, pursuant to 24 CFR 576.107. Contractor must ensure that data on all persons served, and all activities assisted under ESG are entered into the applicable community wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD’s standards on participation, data collection, and reporting under a local HMIS. Contractor shall coordinate and integrate, to the maximum extent practicable, ESG funded activities with mainstream housing, health, social services, employment education, and youth programs targeted to homeless people in the area covered by the Continuum of Care (“CoC”) or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for the area as set forth at 24 CFR 576.400(b) and (c). Furthermore, Contractor understands they are required by federal law to provide for the participation of at least one homeless or formerly homeless person(s) in a policy-making function within the organization as required in 24 CFR 576.405. This might include, for example, involvement of a homeless or formerly homeless person on the Board of Directors or similar entity that considers and sets policy or makes decisions for Contractor. The Contractor also agrees that to the maximum extent practicable, they will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this Agreement as listed in 24 CFR 576.405 in accordance with 42 USC 11375(d) and 42 USC 11375(c)(7).

### 36. Evaluation of Program Participant Eligibility and Needs

Pursuant to 24 CFR 576.401, Contractor and their Service Providers shall conduct an initial evaluation to determine the eligibility of each individual or family's eligibility for ESG assistance and the amount and types of assistance the individual or family needs to regain stability in permanent housing. These evaluations must be conducted in

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accordance with the centralized or coordinated assessment requirements set forth under Section 576.400(d) and the written standards established under Section 576.400(e).

**37. False, Fictitious or Fraudulent Claims:**

Warning: Any person who knowingly makes a false claim or statement to HUD or the Department may be subject to civil or criminal penalties under 18 USC 287, 1001 and 31 USC 3729.

**A. Detecting, Preventing, and Reporting FRAUD**

- 1) Fraud is a white-collar crime that has a devastating effect on the ESG program because the ESG program beneficiaries are victims of this crime when the ESG program is abused.
- 2) HCD wants to stop any criminal assault on the ESG program it administers, and in doing so all ESG funds go to people it was designed to help and improve their living conditions.

**B. Combatting Fraud**

- 1) The U.S. Department of Housing and Urban Development (HUD) Office of Inspector General (OIG) is committed to protecting HUD's programs, operations, and beneficiaries from dishonest individuals and organizations.
- 2) HUD cannot combat fraud alone.
- 3) HUD relies on HCD and ESG NOFA applicants to combat ESG program fraud. HUD also relies on applicants for, and people receiving, HUD benefits, such as tenants receiving rental assistance, borrowers with HUD insured loans, or citizens having their communities restored using HUD grants.
- 4) The HUD OIG Hotline number is 1-800-347-3735, this is the primary means to submit allegations of fraud, waste, abuse, mismanagement, or Whistleblower related matters for the ESG program to the Office of Inspector General.

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- 5) HUD OIG accepts reports of fraud, waste, abuse, or mismanagement in the ESG program from HUD employees, anyone administering the ESG program, anyone working in the ESG program, contractors, and the public.
- 6) You can report mismanagement or violations of law, rules, or regulations by HUD employees or program participants.
- 7) Fraud, Waste and Abuse in the ESG program and its operation may be reported in one of the following four (4) ways:

E-mail to: [hotline@hudoig.gov](mailto:hotline@hudoig.gov)

By Phone: Call toll free: 1-800-347-3735

By Fax: 202-708-4829

By Mail: Department of Housing & Urban Development.

**HUD OIG, Office of Investigation, Room 1200**

**Field Office**

One Sansome Street

San Francisco, CA 94104

[\(213\) 534-2518](tel:(213)534-2518)

**HUD OIG, Office of Investigation**

**Suite 4070**

**Regional Office**

300 North Los Angeles Street

Los Angeles, CA 90012

[\(213\) 534-2518](tel:(213)534-2518)

**38. Whistleblower Protection Act**

**A. Federal Whistleblower Protection Act (5 U.S.C Section 2302(b)(8))**

The Federal Whistleblower Protection Act (WPA) protects employees from retaliation for making protected disclosures. The WPA also provides penalties for supervisors who retaliate against Whistleblowers.

- 1) A disclosure is protected under the WPA if the employee discloses information the employee reasonably believes to be evidence of:

Emergency Solutions Grants Program (ESG)

Continuum of Care (AE) Allocation

NOFA Dates: 8/15/2023

Approve Date: 11/21/2023

Prep. Date: 12/22/2023

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- a) a violation of any law, rule, or regulation,
  - b) gross mismanagement,
  - c) a gross waste of funds,
  - d) an abuse of authority, or
  - e) a substantial and specific danger to public health or safety.
- 2) In general, an employee or applicant may make a protected disclosure to anyone, including non-governmental audiences, unless the information is classified or specifically prohibited by law from release. Options for making a protected disclosure include:
- a) Informing a supervisor or someone higher up in management,
  - b) Submitting a complaint to the OIG by emailing the OIG at [oig@ftc.gov](mailto:oig@ftc.gov),
  - c) Filing a complaint with the Office of Special Counsel (OSC) <http://www.osc.gov/>

**B. The California Whistleblower Protection Act (Title 2, Division 1, Chapter 6.5, Article 3.5, Gov. Code §§ 8548-8548.5)**

The California Whistleblower Protection Act authorizes the California State Auditor to receive complaints from state employees and members of the public who wish to report an improper governmental activity. **An "improper governmental activity" is any action by a state agency or any action by a state employee directly related to state government that:**

- 1) Violates any state or federal law or regulation,
- 2) Violates an Executive Order of the Governor, a California Rule of Court, or any policy or procedure required by the State Administrative Manual or State Contracting Manual, or
- 3) Is economically wasteful or involves gross misconduct, incompetency, or inefficiency. Complaints received by the State Auditor are confidential, and the identity of the complainant may not be revealed without the

**EXHIBIT D**

complainant's permission, aside from to an appropriate law enforcement agency conducting a criminal investigation.

A. There are many ways to file a complaint:

1) By Telephone

You may call the Whistleblower Hotline at (800) 952-5665 to file a complaint by talking to one of the State Auditor's employees. The hotline generally is staffed Monday through Friday from 8:00 a.m. to 5:00 p.m. If you call when the hotline is not being staffed, or staff is occupied with other calls, you may leave a voicemail message requesting a return call.

2) By Mail or Facsimile

You may file a complaint in the form of a letter to the State Auditor addressed as follows:

Investigations  
California State Auditor  
P.O. Box 1019  
Sacramento, CA 95812

Or you may fax the letter to the State Auditor at (916) 322-2603.

As an alternative, you may complete the electronic version of the complaint form (which is available on the State Auditor website at [auditor.ca.gov](http://auditor.ca.gov)), print it out, and return it by mail or facsimile as stated above.

3) Online

Although the State Auditor does not accept complaints by e-mail, you may file a complaint online at <https://www.auditor.ca.gov/contactus/complaint>

B. The State Auditor will not undertake an investigation unless there is a basis for believing that your complaint has sufficient merit to warrant spending resources on an investigation. Your complaint should therefore include:

- 1) A clear and concise statement of what you are alleging to be improper activity and why you believe it is improper.

**EXHIBIT D**

- 2) The name or other information that clearly identifies the person you are alleging has acted improperly and the department where that person works.
- 3) The names and contact information for any witnesses who can confirm the truth of what you are saying.
- 4) Copies of any documents that will support what you are saying. (You should not submit original documents, as they cannot be returned.)

**EXHIBIT E**

**PROJECT SPECIFIC PROVISIONS AND SPECIAL TERMS AND CONDITIONS**

**1. Project Specific Provisions**

The following are project specific terms and conditions (referred to as enumerated provision(s) for ease of reference in prior exhibits) as result of application submitted in response to the ESG NOFA dated August 15, 2023, shall inform the references made to project specific information not contained in prior exhibits.

**Provision Ex. A – E.1 (Scope of Work – As referenced in Exhibit, Section 2)**

<b>Contractor Name</b>	<b>Total Award Allocation</b>
San Bernardino County	\$259,772

For the purposes of performing the Work, the Department agrees to provide the amount shown above. In no instance shall the Department be liable for any costs for Work in excess of this amount, nor for any unauthorized or ineligible costs. The ESG Recipient agrees to administer this allocation in accordance with the provisions of 24 CFR 576 and Part 91 and the ESG State Regulations, Title 25, Division 1, Chapter 7.

**Provision Ex. A – E.2 (Term of Agreement and Deadlines – (As referenced in Exhibit A, Section 4)**

- A. This Contract will **expire** on: October 15, 2025
- B. All Program funds shall be **expended** by: August 18, 2025

**Provision Ex. A – E.3 (Expenditure Milestone Requirements - As referenced in Exhibit A, Section 4 (G))**

<b>Percentage of ESG Award that must be expended</b>	<b>Milestone Deadline</b>
20%	120 days after execution of contract
50%	180 days prior to expenditure deadline
80%	60 days prior to expenditure deadline



**EXHIBIT E**

**Provision Ex. A – E.4** (Contractor’s Contract Coordinators - As referenced in Exhibit A, Section 9)

Authorized Representative Name	Diane Rundles
Authorized Representative Title	Assistant Executive Officer, Community Revitalization
Agency Name	San Bernardino County
Address	385 N. Arrowhead Avenue, 5th Floor San Bernardino, CA 92415
Phone No.	(909) 387-4717
Email Address	diane.rundles@cao.sbcounty.gov

**Provision Ex. B – E.1** (Budget Detail and Payment Provisions - As referenced in Exhibit B, Section 1)

Rapid Re-Housing Assistance	\$ 101,127
Street Outreach	\$ 126,408
Homeless Management Information System	\$ 25,282
Grant Administration	\$ 6,955

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**TOTAL GRANT AWARD AMOUNT: \$ 259,772**

**2. Special Terms and Conditions**

The following Special Conditions are applicable to this Standard Agreement and shall control notwithstanding anything to the contrary herein:

[N/A]