



**Contract Number**  
21-06 A1

**SAP Number**

## Community Development and Housing

<b>Department Contract Representative</b>	<u>Gary Hallen, Director</u>
<b>Telephone Number</b>	<u>(909) 387-4411</u>
<b>Contractor</b>	<u>State of California Housing and Community Development Department</u>
<b>Contractor Representative</b>	<u>Megan Miller, ESG-CV Prog. Mgr.</u>
<b>Telephone Number</b>	<u>(916) 263-6934</u>
<b>Contract Term</b>	<u>01/12/21 through 09/30/22</u>
<b>Original Contract Amount</b>	<u>\$1,246,600</u>
<b>Amendment Amount</b>	<u>\$3,000,000</u>
<b>Total Contract Amount</b>	<u>\$4,246,600</u>
<b>Cost Center</b>	<u>6210002483</u>

**Briefly describe the general nature of the contract:** The amendment will modify the existing Contract No. ESGCV-1-00038 between San Bernardino County, Community Development and Housing Department (CDH) and the State of California Housing and Community Development Department (HCD) increasing the contract amount from \$1,246,600 to \$4,246,600 to fund homeless services such as: emergency shelter, street outreach, rapid rehousing, data collection through the Homeless Management Information System (HMIS) to prevent, prepare and respond to the Coronavirus pandemic.

**FOR COUNTY USE ONLY**

Approved as to Legal Form  Suzanne Bryant, Deputy County Counsel Date <u>July 28, 2021</u>	Reviewed for Contract Compliance _____ Date _____	Reviewed/Approved by Department _____ Date _____
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**STANDARD AGREEMENT - AMENDMENT**

STD 213A (Rev. 4/2020)

<input type="checkbox"/> CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED _____ PAGES	AGREEMENT NUMBER 20-ESGCV1-00038	AMENDMENT NUMBER 1	Purchasing Authority Number
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1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR NAME

County of San Bernardino Community Development and Housing Department

2. The term of this Agreement is:

START DATE

January 12, 2021

THROUGH END DATE

September 30, 2022

3. The maximum amount of this Agreement after this Amendment is:

\$4,246,600.00

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

Add ESG-CV Round 2 funding in the amount of \$3,000,000.00 Exhibits A, B, and D from the original ESG-CV Standard Agreement are replaced and superseded by the attached Exhibits A, B, and D in this Amendment. The original Exhibits A, B, and D have no further force and effect. Add Exhibit F (Contractor's ESG-CV Round 2 Application). This Standard Agreement, including Amendment 1 documents, now encompasses, governs, and restricts ESG-CV funding from the ESG-CV NOFA dated June 1, 2020 (Round 1) and the ESG-CV NOFA dated October 2, 2020 (Round 2).

*All other terms and conditions shall remain the same.*

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.)

County of San Bernardino Community Development and Housing Department

CONTRACTOR BUSINESS ADDRESS

385 N. Arrowhead Avenue

CITY

San Bernardino

STATE

CA

ZIP

92415

PRINTED NAME OF PERSON SIGNING

Curt Hagman

TITLE

Chairman, Board of Supervisors

CONTRACTOR AUTHORIZED SIGNATURE



DATE SIGNED

AUG 10 2021

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS

2020 W. El Camino Ave., Suite 130

CITY

Sacramento

STATE

CA

ZIP

95833

PRINTED NAME OF PERSON SIGNING

Shaun Singh

TITLE

Contracts Manager, Business &amp; Contract Services

CONTRACTING AGENCY AUTHORIZED SIGNATURE



DATE SIGNED

8/23/2021

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 conditional reservation of funds under the State of California's administration of the federal CARES Act Emergency Solutions Grants Program Allocation (hereinafter, "ESG-CV" or the "Program") by the Department of Housing and Community Development (hereinafter the "Department" or "HCD") pursuant to the provisions of the 2020 Federally enacted Coronavirus Aid, Relief, and Economic Security Act, Title XII, Homeless Assistance Grants Section (hereinafter, "CARES Act") and any HUD Notices or waivers including the HUD Mega-Waiver dated April 1, 2020 and HUD CPD Notice-20-08 dated September 1, 2020 and, where not superseded by the CARES Act, pursuant to the provisions of 42 USC 11371 – 42 USC 11378, ("Federal Statutes"), 24 CFR Part 576, ("Federal Regulations") all as shall be amended from time to time.

HCD receives federal funds for ESG-CV from the United States Department of Housing and Urban Development (HUD). In accepting this conditional reservation of funds, Contractor (sometimes referred to herein as "Grantee," "Administrative Entity," "Applicant," or "Continuum of Care") agrees to comply with the terms and conditions of this Agreement, which relates to the ESG-CV Notice of Funding Availability (NOFA) dated June 1, 2020 (Round 1) and the ESG-CV NOFA dated October 2, 2020 (Round 2) under which the Contractor applied, the representations contained in the Contractor's Application for the ESG-CV 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.

**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 Grantee to modify any or all parts of the Application in order to comply with ESG-CV requirements. The Department reserves the right to monitor all Work to be performed by the Grantee, its contractors, and subgrantees 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.

Program Name: Emergency Solutions Grants Program (ESG) (under CARES Act – ESG-CV)  
NOFA Dates: 6/1/2020, 10/02/2020  
Approve Date: (02/04/2021)  
Prep. Date: 4/15/2020, Amended 10/28/2020

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- B. Contractor shall perform the Work, only in the areas as identified, and in accordance with the approved ESG-CV Application and as required by Federal ESG requirements at 24 CFR Section 576. 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 subrecipients for at least the term of the ESG-CV grant. For the purposes of performing the Scope of Work, the Department agrees to provide the amount(s) identified in Exhibit F. Unless amended in writing, the Department shall not be liable for any 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. Duplication of Benefits

A Duplication of Benefit (DOB) occurs when a program beneficiary receives assistance from multiple funding sources totaling an amount that exceeds the need for a particular funding need. The duplication is the amount of assistance provided in excess of the need. It is the Department's responsibility to ensure that each ESG-CV activity provides assistance only to the extent that the recipient's project's funding need(s) has not been met by another funding source.

Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) prohibits federal agencies from providing assistance to any "person, business concern, or other entity" for any loss for which the entity has already received financial assistance from another source (See: 42 USC § 5155(a)). The Federal Register Notice, published on November 16, 2011 (Docket No. FR-5582-N-01), requires adequate policies and procedures in place to prevent a DOB and provide for the recapture of funds, if necessary.

Applicants will be required to complete DOB documentation with application. Recipients will be required to continue to report on DOB during the expenditure period for the ESG-CV funds. Applicants will be required to prepare DOB policies and procedures including a policy for funds recapture to be included in written standards.

### 4. Effective Date and Commencement of Work

This Agreement was effective upon the date of the Department representative's signature on page one of the fully executed Standard Agreement, STD 213, (the "Effective Date"). However, the Standard Agreement is being modified per this Standard Agreement Amendment (STD 213A) which is effective upon the date of the Department's representative's signature on page one of STD 213A. Per the CARES Act, contractors may request reimbursement for allowable costs incurred to prevent, prepare for, and respond to coronavirus including costs that are incurred, including costs incurred prior to award letter and prior to the date of the enactment of the CARES Act. In addition, no activity funds shall be incurred until any required environmental review process has been completed, if required under 24 CFR 50, except as exempted by the

## EXHIBIT A

CARES Act as it relates to temporary emergency shelters. Contractor agrees that the Work shall be completed by the expenditure date specified in Exhibit A, Paragraph 5.

- A. Contractor must obligate all funds within one hundred and twenty (120) days from the date of the award notification letter for each of the two rounds of 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 that subcontracts with private nonprofit organizations via letters of awards and Service Provider Agreements, the subcontractors 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-CV funds within one hundred and twenty (120) days from the date the Department made each of the two rounds of grant funding 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 fourteen (14) day written notification.
- C. Contractor and its subcontractors agree that the Work shall be completed by the expenditure date specified in Exhibit A, Section 5 and that the Work will be provided for the full term of this Agreement.

### 5. Term of Agreement and Performance Milestones

- A. This Agreement will expire on: September 30, 2022
- B. All Program funds shall be expended by: July 30, 2022
- C. All Final Funds Requests shall be submitted to the Department within thirty (30) days after the expenditure deadline.
- D. Reimbursements will not be made after this Agreement expires.
- E. Expenditure Milestone Expectations
  - a. In accordance with HUD's expenditure deadlines included in the CPD-20-08 ESG-CV Notice, Grantee must meet the following expenditure deadlines for ESG-CV funding. Should the Grantee not meet the following expenditure requirements, the Department in its sole and absolute discretion reserves the right to recapture any unspent ESG-CV awarded funds up to the maximum amount listed below. The Department also reserves the right in its sole and absolute discretion to mandate a

**EXHIBIT A**

corrective action or remediation plan to ensure future timely expenditure of ESG-CV funds.

Percentage of ESG-CV Award	Expenditure Deadline	Maximum Recapture (as a percentage of total award)
20%	July 31, 2021	20%
40%	September 30, 2021	40%
60%	November 30, 2021	60%
80%	January 31, 2022	80%

**6. 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.

**7. ESG Program Contract Management**

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

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

B. Contract Management: Day-to-day administration of this Agreement shall take place through the online grant management system, including, but not limited, to:

- 1) Requests for Funds Forms;
- 2) Budget Revision Forms;

**EXHIBIT A**

- 3) Annual Reports;
- 4) Submittal of any and all requested supporting documentation;
- 5) Standard Agreement Revisions (non-material contract changes); and,
- 6) Standard Agreement Amendments (material contract changes).

C. Grantee Contract Administrator: The Grantee's Contract Administrator (must be a Grantee employee) as identified in Exhibit E, Profile. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be directed to the Grantee's Contract Administrator at the contact information identified in Exhibit E, Profile. Written communication shall be directed to the Grantee's Contract Administrator as identified in the Grantee Profile as referenced in Exhibit E.

**8. Capacity to Contract**

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

**9. 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 his or her own behalf, represents that he or she is authorized to execute this Agreement on behalf of said entity.

## EXHIBIT B

### **BUDGET DETAIL AND PAYMENT PROVISIONS**

#### **1. Budget**

Budget Detail: ESG-CV funds shall be used for the activities as detailed in Exhibit F of this Agreement, and as described under federal ESG regulations at 24 CFR Part 576, Subpart B – Program Components and Eligible Activities, the CARES Act, Title XII, Homeless Assistance Section, and as subject to any notices and waivers issued including the HUD Mega-Waiver issued April 1, 2020 and HUD CPD Notice-20-08 dated September 1, 2020.

#### **2. Availability of Funds**

The Department's provision of funding to Contractor pursuant to this Agreement is contingent on the continued availability of ESG-CV funds and continued federal authorization for ESG-CV 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 thirty (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-CV Request for Funds (RFF). The Contractor shall submit all RFFs to the Department, as referenced in Exhibit A, Section 7 via the online eCivis Grants Network portal. Each 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, Paragraph 11A. Reimbursements will not be made after this Agreement expires.

All requests for disbursement shall include expenditure detail. Contractor also certifies that detailed supporting documentation verifying each expenditure is available and shall be retained by the Contractor for three (3) years after the Department closes its HUD grant.

**NOTE:** Record retention is based on the Department's HUD closing date; NOT three (3) years

## EXHIBIT B

*from this Agreement expiration.* The retention requirement can extend beyond three (3) 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 A, Section 5.

### 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.

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).

### 5. Ineligible Costs

- A. ESG-CV 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 and eligibility of all costs to be paid with ESG-CV funds made available by this Agreement. If Contractor or its funded subrecipients use ESG-CV 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 Agreement, or which cannot be adequately documented, shall be disallowed and must be immediately reimbursed to the Department or its designee, by the Contractor. Expenditures for work, not described in Exhibit A or Paragraph 1 above, 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.
- C. The Department, at its sole and reasonable discretion, shall make the final determination regarding the allowability of expenditures.

### 6. Indirect Costs

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

Program Name: Emergency Solutions Grants Program (ESG)  
NOFA Dates: 6/1/2020, 10/02/2020  
Approve Date: (02/04/2021)  
Prep. Date: 4/15/2020, Amended 10/28/2020

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- A. Comply with all OMB requirements and standards including 2 CFR 200.403, 200.415, and Part 200 Appendix 4;
- B. Certify that any providers seeking reimbursement for indirect costs at the de minimis rate do not meet the definition of a major nonprofit organization as defined by OMB 2 CFR 200.414; and,
- 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.

**EXHIBIT D**

**ESG PROGRAM TERMS AND CONDITIONS**

**1. Definitions**

- A. In addition to the definitions found in 42 U.S.C. section 11371 (section 411), 24 C.F.R. section 576.3, and HUD CPD Notice-20-08 issued September 1, 2020 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.
  - 4) "Application" means Grantee's ESG-CV application in response to the ESG-CV NOFA dated June 1, 2020 (Round 1) as evidenced by Exhibit E of this Agreement and Grantee's ESG-CV application in response to the ESG-CV NOFA dated October 2, 2020 (Round 2) as evidenced by Exhibit F of this Agreement.
  - 5) "At Risk of Homelessness" as defined in HUD CPD Notice-20-08 issued September 1, 2020
  - 6) "CARES Act" refers to the 2020 Federally issued Coronavirus Aid, Relief, and Economic Security Act, Title XII, Department of Housing and Urban Development, Community Planning and Development, Homeless Assistance Grants Section
  - 7) "City" is defined at 42 U.S.C. section 5302(a)(5).
  - 8) "Continuum of Care" is defined at 24 CFR 576.2.
  - 9) "Continuum of Care Service Area" means the entire geographic area within the boundaries of an Eligible Continuum of Care.
  - 10) "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".
  - 11) "Core Practices" means the practices and protocols of delivering ESG Eligible activities as specified in the CARES Act.

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- 12) "Department" means the California Department of Housing and Community Development.
- 13) "ESG" is the acronym for the Emergency Solutions Grants program.
- 14) "ESG-CV" as defined in HUD CPD Notice-20-08 issued September 1, 2020
- 15) "Eligible Activities" mean those activities upon which ESG-CV funds may be expended as described in the CARES Act and as defined under 24 CFR 576, Subpart B. Additionally, Eligible Activities may include or be limited by the State ESG Regulations, as applicable.
- 16) "Eligible Continuum of Care" means a Continuum of Care in the State that has within its Service Area at least one Nonentitlement Area.
- 17) "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.
- 18) "Emergency shelter" is defined under 24 CFR 576.2 and the CARES Act.
- 19) "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 USC 5302 that receives an allocation of ESG funds directly from HUD;
  - b. is in a Nonentitlement 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.
- 20) "ESG Entitlement Area" or "Entitlement Area" means the geography within an ESG Entitlement's boundaries.
- 21) "ESG Nonentitlement" 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.
- 22) "ESG Nonentitlement Area" means the geography within an ESG Nonentitlement's boundaries.
- 23) "Governing Board" - for nonprofit applicants this term includes board of directors; for county local government applicants this term includes county board of supervisors; for city local government applicants this term includes city council.

**EXHIBIT D**

- 24) "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.
- 25) "Homeless" is defined at 24 CFR 576.2.
- 26) "Homelessness Prevention Activities" means activities or programs described in 24 CFR 576.103.
- 27) "HUD" means the United States Department of Housing and Urban Development.
- 28) "NOFA" is the acronym for a "Notice of Funding Availability."
- 29) "Nonentitlement Area" is defined at 42 U.S.C. 5302.
- 30) "Operations" means the category of ESG activities that includes shelter maintenance, operation, rent, repairs, security, fuel, equipment, insurance, utilities, food and furnishings.
- 31) "Private nonprofit organization" is defined at 24 CFR 576.2.
- 32) "Prevent, Prepare for, and Respond to Coronavirus" as defined in HUD CPD Notice-20-08 issued September 1, 2020
- 33) "Program" shall mean CARES Act funding for the Emergency Solutions Grants Program ("ESG") and is also referred to as "ESG-CV." Per the ESG-CV NOFAs dated June 1, 2020 and October 2, 2020 (and as may be amended by the Department), ESG-CV may be subject to different federal and state rules, laws, and regulations than the Department's prior or future administration of ESG funds.
- 34) "Rapid Re-Housing" means the activities set forth in 24 CFR 576.104.
- 35) "Service Area" has the same meaning as the term "Continuum of Care Service Area".
- 36) "Site" means one or more facilities where the program(s) is being carried out.
- 37) "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;
  - b. a lease demonstrating a leasehold interest in the Site and its improvements for at least the term of the ESG-CV grant,

**EXHIBIT D**

- c. an enforceable option to purchase or lease a site provided that such option will be for at least the term of the ESG-CV 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-CV applications stated in the applicable NOFA.
- 38) "Standard Agreement" means the contract entered into by the Department and the ESG-CV Recipient (also known as Contractor) setting forth the basic terms and conditions governing the awards of ESG-CV funds.
- 39) "Subrecipient of the Administrative Entity" means an entity that enters into a written agreement with the Administrative Entity to implement Eligible Activities with ESG-CV funds.
- 40) "Temporary Emergency Shelter" as defined in HUD CPD Notice-20-08 issued September 1, 2020
- 41) "Unit of General Purpose Local Government" is defined at 24 CFR section 576.2 and HUD CPD Notice-20-08 issued September 1, 2020
- 42) "Written Standards" means the standards, policies, and procedures adopted by a Continuum of Care for providing ESG-CV Eligible Activities pursuant to the requirements of 24 CFR 576.400 (e).

Note: Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. 5302, 42 U.S.C. 11302, 42 U.S.C. 11371, 42 U.S.C. 11373, 24 C.F.R. 576.3 and 24 C.F.R. 576.400.

**2. Eligible Activities**

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

- A. For Rapid Rehousing (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; and,

Program Name: Emergency Solutions Grants Program (ESG)  
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- 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 OMB requirements, Contractor may permit homeless service providers receiving ESG-CV funds to charge an indirect cost allocation to their grant. The indirect cost allocation may not exceed ten percent of the allowable direct costs under the ESG-CV 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. Grantee shall receive approximately five percent (5%) of its ESG-CV Round 1 grant allocation and approximately three percent (3%) of its ESG-CV Round 2 grant allocation for the payment of administrative costs.
  - D. Rental assistance payments provided as part of an RR or HP activity under 24 CFR Part 576.106 typically cannot exceed HUD's Fair Market Rent (FMR) as provided under 24 CFR Part 888, except as provided in the HUD Waiver issued April 1, 2020 and HUD CPD Notice-20-08 issued September 1, 2020 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 the CARES Act shall apply including, but not limited to the following:
    - 1) The maximum allocation spending cap on Emergency Shelter activities of sixty percent (60%) of the aggregate amount of assistance provided for the contractor established pursuant to section 415(b) of the McKinney-Vento Homeless Assistance Act (42 U.S.C 11374) **shall not apply** to amounts provided under the CARES Act.
    - 2) ESG-CV funding amounts provided under the CARES Act may be used to provide temporary emergency shelters (through leasing of existing property temporary structures, or other means) to prevent, prepare for and respond to Coronavirus, and that such temporary emergency shelters shall not be subject to the minimum periods of use as required by section 416(c)(1) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11357(c)(1)). Federal habitability and environmental review standards and requirements shall not apply to the use of such ESG-CV funding amounts for those temporary emergency shelters that have been determined necessary to prevent, prepare for, and respond to Coronavirus.
    - 3) ESG-CV funding amounts provided under the CARES Act may be used for training on infectious disease prevention and mitigation and to provide hazard pay, including for time worked prior to the date of enactment of the CARES Act, for staff working directly to prevent, prepare for, and respond to Coronavirus among persons who are homeless or at risk of homelessness, and that such

**EXHIBIT D**

activities shall not be considered administrative costs for purposes of the administrative cap.

- 4) None of the ESG-CV funds provided under the CARES Act may be used to require people experiencing homelessness to receive treatment or perform any other prerequisite activities as a condition for receiving shelter.

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

- 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 thirty (30)- day cancellation clause or to amend the contract to reflect any reduction in funds.

**4. Sufficiency of Funds and Termination**

- A. The Department may terminate this Agreement at any time for cause by giving a minimum of fourteen (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 thirty (30) days of the Notice of Termination.
- B. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays, which would occur if the Agreement were executed after the determination was made.
- 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,

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or statute, regulations or any other laws, whether federal or those 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 affect the provisions, terms or funding of this Agreement in any manner.

- D. It is mutually agreed that if the 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 thirty (30) day cancellation clause or to amend this Agreement to reflect any reduction of funds.

**5. 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.

**6. Contractors and Subcontractors**

- A. Contractor, or its subcontractors, shall not enter into any Agreement, written or oral, with any contractor without the prior written determination by the Department of the Contractor's eligibility. A Contractor or subcontractor is not eligible to receive grant funds if the Contractor is not licensed and in good standing in California or is listed on the Federal Consolidated List of Debarred, Suspended and Ineligible Contractors.
- B. The Agreement between the Contractor and any subcontractor shall require the Contractor and its subcontractors, if any, to:
  - 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 20, 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 14.
  - 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

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or damaged by the Contractor or any subcontractor in performing the Work or any part of it.

- 6) Agree to include all the terms of this Agreement in each subcontract.
- 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.

**7. Core Practices**

- A. All ESG-CV funded activities shall operate in a manner consistent with the requirements of the CARES Act, including but not limited to prevention, preparation for and response to Coronavirus, among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homeless prevention activities to mitigate the impacts created by Coronavirus and that none of the funds provided under this CARES Act may be used to require people experiencing homelessness to receive treatment or perform any other prerequisite activities as a condition for receiving shelter, housing or other services.
- B. All service providers receiving ESG-CV 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, policies and protocols 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.
- D. The Contractor will develop and implement procedures to ensure the confidentiality of the records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG-CV program, including protection 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-CV funds are used for shelter operations or essential services related to street outreach or emergency shelter, the Contractor will ensure the subrecipient will provide services or shelter to homeless individuals and families for the period during which the ESG-CV 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.

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- F. The Contractor will ensure the subrecipients 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. To the maximum extent practical, the Contractor and its subrecipients, will involve homeless individuals and families, through employment, volunteer services, or otherwise, in constructing, renovating, maintaining and operating facilities assisted under ESG-CV and in providing services for occupants of facilities assisted by ESG-CV.

**8. 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 U.S.C.794) and implementing regulations at 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 CFR part 100, Title II of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.), and 28 CFR part 35, where applicable.

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

**9. 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.

**10. Monitoring Grant Activities**

- A. Contractor shall monitor the activities selected and awarded by them to ensure compliance with all ESG-CV requirements. An onsite monitoring visit 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

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monitor any subrecipients of the Contractor as the Department deems appropriate based on a risk assessment.

- C. The Department will monitor the performance of Contractor and funded projects based on the performance measures used by HUD in ESG or the Continuum of Care 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 Continuum of Care 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 subrecipients falsified any certification, application information, financial, or contract report, the Contractor shall be required to immediately reimburse the full amount of the ESG-CV 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-CV monitoring documentation necessary to ensure that Contractor and its subrecipients are in continued compliance with all ESG-CV requirements. Such documentation requirements and the submission deadline(s) shall be provided by the Department when the information is requested from the Contractor.

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

- A. The Contractor and its subrecipients shall comply with the policies, guidelines and requirements under 2 CFR, Part 200, as applicable, as they relate to the cost principles, audit requirements, acceptance and use of federal funds under this 2 CFR, Part 200.
- B. The Contractor agrees to comply with all federal and state laws and regulations applicable to the ESG-CV Program and to the grant activity(ies), and with any other federal provisions as set forth in this Agreement. The Contractor agrees to 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 contractor or subcontractor and the Work. This includes, but is not limited to, complying with all relevant sections of 2 CFR Part 200.

**12. Procurement of Goods and Services**

Prior to the drawdown of ESG-CV funds for the Contractor's purchase of goods or services, Contractor, shall comply with the Procurement Standards contained in 2 CFR 200. Contractor, when procuring goods with ESG-CV funds, must provide the Department with evidence of compliance with these requirements, as applicable.

**13. Procurement of Recovered Materials**

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Contractor and its subrecipients 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.

### 14. Equal Opportunity Requirements and Responsibilities

- A. **Title VI of the Civil Rights Act of 1964:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.
- B. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act):** This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively 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 fifty-five (55) or older.
- F. **The Housing for Older Persons Act of 1995 (HOPA):** Retained the requirement that the housing facilities must have one person who is fifty-five (55) years of age or older living in at least eighty percent (80%) of its occupied units. The act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons fifty-five (55) or older.

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- G. **The Age Discrimination Act of 1975:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of seventy (70) was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- H. **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.
- I. **The Americans with Disabilities Act of 1990 (ADA):** This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- J. **Executive Order 11063:** This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- K. **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.
- L. **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.
- M. **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 (1-9).

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

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

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

- A. Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- B. Notifying potential subrecipients for Section 3 covered projects of the requirements and incorporating the Section 3 clause set forth in 24 CFR Part Section 135.38 in all solicitations and contracts in excess of \$100,000.00.
- C. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the appendix to this part, as appropriate, to reach the goals set forth in 24 CFR Part Section 135.30. Subrecipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in 24 CFR Part Section 135.30.
- D. Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the subrecipient has notice or knowledge that the Contractor has been found in violation of the regulations in 24 CFR Part 135.

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- E. Documenting actions taken to comply with the requirements of this part, the results of those actions taken and impediments, if any.
- F. A Contractor which distributes funds for Section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in 24 CFR Part Section 135.30 regardless of the number of local governments receiving funds from the Section 3 covered assistance which meet the thresholds for applicability set forth at 24 CFR Part Section 135.30. The State must inform units of local government to whom funds are distributed of the requirements of this part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

**16. Affirmative Outreach**

- A. Contractor or its subrecipients must make known that the use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures the Contractor or its subrecipients intends 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 Contractor or its subrecipients must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services.
- B. Contractor or its subrecipients 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, applicants are also required to take reasonable steps to ensure meaningful access to programs and activities for Limited English Proficiency (LEP) persons.

**17. Environmental Requirements**

This Agreement is subject to the provisions of the California Environmental Quality Act (CEQA). Contractor assumes responsibility to fully comply with CEQA's requirements regarding the Work. In addition, Contractor shall comply with the environmental requirements of 24 CFR Part 576.407 subdivision (d). The obligation of funds and incurring of costs is hereby conditioned upon compliance with CEQA, 24 CFR Section 576.407 subdivision (d) and completion by the State and the U.S. Department of Housing and Urban Development of all applicable review and approval requirements.

The Contractor shall supply all available, relevant information necessary for the Department to perform for each property any environmental review as required under 24 CFR Part 50. The Contractor shall also carry out mitigating measures required by the Department or select an

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alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

The subrecipient, or any contractor of the subrecipient, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project, or commit or expend ESG-CV or local funds for eligible activities under this part, until HUD has performed an environmental review under 24 CFR Part 50 and the subrecipient has received HUD approval of the property, except as permitted related to temporary shelters per the CARES Act, Title XII, Homeless Assistance Grants Section. For all funded applications, the Department will inform the subrecipient any required additional environmental review.

**18. Clean Air and Water Acts**

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

**19. Lead-Based Paint Hazards**

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

**20. Prevailing Wages**

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, Contractor shall ensure that the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of the Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- B. For the purposes of this requirement “construction work” includes but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the “Construction Contract”). Where the Construction Contract will be between the Contractor and a licensed building contractor, Contractor shall serve as the “awarding body” as defined in the Labor Code. Where the Contractor will provide funds to a third party that will enter into the Construction Contract with a licensed building contractor, the third party shall serve as the “awarding body”.
- C. The Construction Contract and any amendments thereto shall be subject to the prior written approval of the Department. Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a

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certificate from the awarding body that prevailing wages have been or will be paid when required by Section 1720 et. seq. of the Labor Code.

**21. Matching Funds**

Per the CARES Act, the amounts provided under the ESG-CV funding shall not be subject to match requirements that otherwise apply to ESG funding.

**22. Assurance of Compliance with the “Violence Against Women Reauthorization Act of 2013” (VAWA) (S.47 - 113th Congress (2013-2014)) (as amended or reauthorized) Title VI - Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking – Sec. 601-603**

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 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 or its subrecipients assure that:

- 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.

**23. Liability Insurance**

Unless otherwise approved in writing, Contractor shall have and maintain in full force and effect

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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.

**24. Reporting and Recordkeeping**

- A. 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.
- B. Contractor shall submit, within thirty (30) days after the end of the State-designated reporting period, in a manner and format approved by the Department, a Request for Funds (RFF) and Detailed Expense Report (DER). 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.
- C. 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). Contractor shall collect all program data elements using the HMIS and comply with all reporting requirements.
- D. Contractor shall maintain all fiscal and program records pertaining to the ESG-CV Grant for a period of three (3) 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 three (3) years from this Agreement expiration.* The retention requirement can extend beyond three (3) years after this Agreement expires. Therefore, the Contractor must contact the Department for the specific record retention date for this Agreement.

- E. Contractor shall submit required reports on forms approved by the Department.

**25. Audit/Retention and Inspection of Records**

- 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, 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 three (3) years after the Department closes its HUD grant or any other period specified in 24 CFR §576.500 (y).

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**NOTE:** Record retention is based on the Department's HUD closing date; NOT three (3) years from this Agreement expiration. The retention requirement can extend beyond three (3) years after this Agreement expires. Therefore, the Contractor must contact the Department for the specific record retention date for this Agreement. 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.

- B. 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.
- C. Private Nonprofit Organization and Unit of General-Purpose Local Government contractors shall comply with the audit requirements contained in 2 CFR Part 200.

**26. Faith-Based Activities**

Contractor and its subrecipients 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 subrecipients listed in Exhibit B shall also comply with the requirements of 24 CFR Section 576.406 of the Federal Regulations.

**27. 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 OMB Circulars A-102 and A-110, 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 him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one (1) year thereafter. HUD may grant an exception to this exclusion as provided in 24 CFR §570.611 (d) and (e).

**28. Anti-Lobbying Certification**

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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 subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and no more than \$100,000.00 for such failure.

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

**29. 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.

**30. 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

**31. Sanctions**

Program Name: Emergency Solutions Grants Program (ESG)  
NOFA Dates: 6/1/2020, 10/02/2020  
Approve Date: (02/04/2021)  
Prep. Date: 4/15/2020, Amended 10/28/2020

**EXHIBIT D**

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

- A. Conditioning a future grant on compliance with specific laws of regulations;
- B. Directing Contractor or its subrecipients 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.