

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

APRIL 7, 2020

TITLE:

**APPROVE THE FISCAL YEAR 2020 – 2021
EMERGENCY SOLUTIONS GRANTS
PROGRAM FOR A TOTAL AMOUNT OF
\$500,947**

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
☐ As Amended
☐ Ordinance on 1st Reading
☐ Ordinance on 2nd Reading
☐ Implementing Resolution
☐ Set Public Hearing For

CONTINUED TO _____

FILE NUMBER _____

/s/ Kristine Ridge

CITY MANAGER

RECOMMENDED ACTION

1. Approve an allocation of the Emergency Solutions Grants Program for Fiscal Year 2020-2021 in the amount equal to the Grant Year 2020 award of \$500,947 from the United States Department of Housing and Urban Development.
2. Direct the City Attorney to finalize and authorize the City Manager to execute a memorandum of understanding with the Santa Ana Police Department and agreements with non-profit homeless service providers awarded funds as part of the approved program for a one-year term beginning July 1, 2020 and expiring June 30, 2021 from the United States Department of Housing and Urban Development, subject to non-substantive changes approved by the City Manager and City Attorney.

| Organization | Amount |
|--|-----------|
| HEART- Outreach and engagement by SAPD | \$ 51,880 |
| Interval House - Shelter as a result of domestic violence | \$ 40,000 |
| Mercy House – Financial assistance for those at-risk of homelessness, rental assistance, case management, and housing search placement. • \$25,000 for Homeless Prevention and \$100,000 for Rapid Re-Housing. | \$125,000 |
| Mercy House and New Santa Ana Homeless Shelter Operator • \$151,468 for Emergency Shelter at The Link through October 2020. Any remaining funds will be allocated to the new shelter operator. | \$151,468 |
| Second Chance OC – shelter services, case management | \$ 30,000 |
| WISEPlace - Financial assistance, case management and housing search and placement | \$ 50,000 |
| 2-1-1 Orange County – Data collection | \$ 15,028 |
| Total for Non-Profit Organizations | \$463,376 |
| Administration | \$ 37,571 |
| TOTAL | \$500,947 |

DISCUSSION

The Emergency Solutions Grants (ESG) Program provides funds to assist sheltered and unsheltered homeless individuals, as well as those at risk of homelessness to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness. Recipients of ESG Program funding in Orange County include the following entitlement jurisdictions: County of Orange, City of Anaheim, City of Irvine, City of Santa Ana and City of Garden Grove. Collectively, this group is referred to as the Orange County ESG Collaborative that was formed over five years ago. To ensure that funds are leveraged to create maximum impact, the Orange County ESG Collaborative has created a single Request for Proposals process, developed aligned values and priorities, and makes funding recommendations collaboratively to achieve the Orange County Continuum of Care goal to end homelessness.

On November 7, 2019, three member cities of the Orange County ESG Collaborative released a combined ESG Request for Proposals (RFP) to support the Orange County Continuum of Care's goal to end homelessness (the County of Orange and City of Irvine allocated their funding independent of the Collaborative this funding cycle). The Collaborative accepted applications until December 10, 2019, with supplemental applications and requirements for both the City of Santa Ana and Anaheim. The RFP included a provision for up to four one-year renewals that could be exercised by each Collaborative member. Should the OC Collaborative determine to exercise these annual renewals past the end of FY 20-21, an RFP will not be released again. This means that current subrecipients awarded funding in FY 20-21 will be required to submit a new budget and program summary each year, but a new RFP will not be issued again for five years. Any new forms and information will be provided by the Collaborative each year. In addition, the Collaborative reserves the right to redistribute funding and/or issue a new RFP at its discretion. Each annual renewal for the City of Santa Ana will be recommended for approval by City Council.

Applications were reviewed by City staff together with housing and community development commissioners from Santa Ana, Garden Grove and Anaheim. Applicants were interviewed by the review panel on February 5, 2020. Following this RFP process, staff are recommending FY 2020-21 ESG program funding to seven organizations. Exhibit 1 identifies the summary of FY 2020-21 funding recommendations. The funding recommendations are based upon applications received, performance and current needs identified by staff. The allocation is broken down by category to provide more detail on funds allocated to specific eligible ESG activities. A template of the grant agreement that will be executed with each organization after approval by City Council is provided as Exhibit 2. The memorandum of understanding with the Santa Ana Police Department is provided as Exhibit 3.

In regards to the \$151,468 recommended for Mercy House for Shelter Operations and Essential Services, this specific allocation is to count toward the \$6,398,123 already approved for the Link shelter by City Council. On September 18, 2018, City Council authorized the City Manager to execute an agreement with Mercy House to operate an interim emergency homeless shelter with a total budget in an amount not to exceed \$6,398,123. The Link will be operational at least through the end of October 2020. A total of \$151,468 of the \$6,398,123 for the Link will be allocated from the ESG Program for FY 2020-2021. If the total ESG funds of \$151,468 allocated

to Mercy House to operate the Link interim shelter are not expended before the Link ceases operation, the remaining funds will be reallocated to the nonprofit operator of the new shelter, which has yet to be determined. The grant agreement that will be executed with Mercy House after approval by City Council is provided as Exhibit 4.

STRATEGIC PLAN ALIGNMENT

Approval of this item allows the City to meet Goal #5 - Community Health, Livability, Engagement & Sustainability, Objective #6, (Focus projects and programs on improving the health and wellness of all residents).

FISCAL IMPACT

Funds will be budgeted and available in the Emergency Solutions Grants account (no. 13518785-various) upon execution of a grant agreement between the City and HUD and adoption of the FY 2020-21 annual budget. It is anticipated that the ESG allocation will be expended as follows:

| Grant Year | Program | Account No. | Anticipated Expenditure in FY | Amount |
|-------------------|----------------|--------------------|--------------------------------------|---------------|
| 2020 | ESG | 13518785-various | 2020-21 | \$500,947 |

Exhibits: 1. FY 2020 – 2021 Emergency Solutions Grant Allocation Recommendations
 2. Emergency Solutions Grant Agreement Template
 3. Memorandum of Understanding with Santa Ana Police Department
 4. Mercy House Emergency Solutions Grant Agreement

City of Santa Ana Emergency Solutions Grant
FY 2020-2021 Funding Recommendations

| Category of Eligible ESG Activity | Subtotal | SAPD HEART | Nonprofit Organizations | | | | | 2-1-1 Orange County |
|--|---------------|--------------|-------------------------|-----------------------------|---------------|------------------|--------------|---------------------|
| | | | Interval House | Santa Ana Homeless Shelter* | Mercy House | Second Chance OC | WISEPlace | |
| Street Outreach | \$ 51,880.00 | \$ 51,880.00 | | | | | | |
| Emergency Shelter - Operations | \$ - | | | | | | | |
| Emergency Shelter - Essential Services | \$ 221,468.00 | | \$ 40,000.00 | \$ 151,468.00 | | \$ 30,000.00 | | |
| Homeless Prevention | \$ 25,000.00 | | | | \$ 25,000.00 | | | |
| Rapid Rehousing | \$ 150,000.00 | | | | \$ 100,000.00 | | \$ 50,000.00 | |
| HMIS Data Collection | \$ 15,028.00 | | | | | | | \$ 15,028.00 |
| Santa Ana Admin - 7.5% | \$ 37,571.00 | | | | | | | |
| | \$ 500,947.00 | \$ 51,880.00 | \$ 40,000.00 | \$ 151,468.00 | \$ 125,000.00 | \$ 30,000.00 | \$ 50,000.00 | \$ 15,028.00 |

*Mercy House is the operator of The Link shelter through October 2020. If funds are not expended, remaining funds are to be allocated to the new shelter operator

**EMERGENCY SOLUTIONS GRANT
SUBRECIPIENT AGREEMENT BETWEEN
THE CITY OF SANTA ANA
AND**

(24 CFR Parts 91 and 576)

THIS GRANT AGREEMENT, is hereby made and entered into this _____, 2020, by and between the City of Santa Ana, a charter city and municipal corporation of the State of California, herein called the "CITY", and _____, a California nonprofit organization, herein called the "SUBRECIPIENT".

RECITALS:

1. The CITY is the recipient of Emergency Solutions Grant ("ESG") funds from the United States Department of Housing and Urban Development ("HUD"), pursuant to subtitle B of title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11371–11378], for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, and for homelessness prevention and rapid re-housing assistance. Catalogue of Federal Domestic Assistance ("CFDA") 14.231 and Federal Award Identification Number (FAIN) E-20-MC-06-0508.

2. The CITY has approved the provision of federal funds under the ESG to be used in the operation of an emergency solutions program ("program") for the homeless or at-risk of homelessness of the City of Santa Ana as further described by **Exhibit A**, Scope of Work, attached hereto and by this reference incorporated herein.

3. The SUBRECIPIENT represents that it has the requisite qualifications, expertise, and experience in the provision of emergency solutions programs for the homeless or at-risk of homelessness and is willing to use said federal funds to operate said program.

4. The SUBRECIPIENT agrees to assist individuals and families that are homeless or at risk of homelessness in obtaining appropriate supportive services including, but not limited to: temporary and permanent housing, relocation and stabilization services, rapid re-housing assistance, medical and mental health treatment, counseling supervision, and other services essential for achieving independent living.

5. The SUBRECIPIENT has agreed to be reimbursed for the above services in an amount not to exceed \$XX,XXX in grant funding for Shelter, Outreach Services, Rapid Re-Housing or Homeless Prevention.

6. This AGREEMENT is contingent upon the award of Emergency Solutions Grant funds from the United States Department of Housing and Urban Development.

7. The CITY and the SUBRECIPIENT have duly executed this AGREEMENT for the expenditure and utilization of said funds.

NOW THEREFORE, it is agreed by and between the parties that the foregoing Recitals are a substantive part of this AGREEMENT and the following terms and conditions are approved and together with all exhibits and attachments hereto, shall constitute the entire AGREEMENT between the CITY and the SUBRECIPIENT:

I. SCOPE OF PROGRAM**A. General Administration**

The SUBRECIPIENT agrees to implement this activity as set forth in detail in **Exhibit A**, Scope of Work, which shall provide a description of each activity, including the services to be performed, the person or entity providing the service, the estimated number of recipients of the service, and the manner and means of the services.

B. Levels of Accomplishment – Goals and Performance Measures

The SUBRECIPIENT shall be responsible to accomplish the levels of performance as set forth in **Exhibit A** and report such measures quarterly to the CITY. If the SUBRECIPIENT estimates such goals will not be met, the SUBRECIPIENT is to contact the CITY, at which time the CITY will determine if any adjustments to the grant award is appropriate.

C. Staffing

The SUBRECIPIENT shall ensure adequate and appropriate staffing is allocated to each ESG activity. Nothing contained in this AGREEMENT is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties.

II. TERM OF AGREEMENT

This AGREEMENT shall take effect on July 1, 2020, and shall terminate on June 30, 2021, unless otherwise cancelled or modified according to the terms of this AGREEMENT.

III. DISBURSEMENT AND FUNDS

The City was allocated \$500,947 in Emergency Solutions Grant funds under the McKinney-Vento Homeless Assistance Act for fiscal year 2020-2021 from the Department of Housing and Urban Development. CITY agrees to pay to SUBRECIPIENT when, if and to the extent federal funds are received under provisions of the Act a sum not to exceed \$XX,XXX for SUBRECIPIENT'S performance in accordance with the Budget attached hereto as "Exhibit B" during the period of this Agreement. Said sum shall be paid after CITY receives invoices submitted by SUBRECIPIENT as provided hereinabove.

A. Amount and Expenditure End Date

The CITY agrees to reimburse the SUBRECIPIENT a maximum amount not to exceed \$ XX,XXX from Emergency Solutions Grant (ESG) funds, as outlined in **Exhibit B**, Final Budget, and such funds shall be expended by the SUBRECIPIENT on or before June 30, 2021. SUBRECIPIENT has the ability to adjust line item amounts in the Budget with the written approval of the CITY's Executive Director of the Community Development Agency, so long as the total Budget amount does not increase.

B. Invoicing Procedures

The SUBRECIPIENT shall submit quarterly invoices (on or before the 15th day of October, January, April, and July) in a form prescribed by the CITY, detailing such expenses. Such schedule may be modified with the approval of the CITY.

C. Payment

Payment is subject to the receipt and approval of such invoices and quarterly activity reports, as hereinafter more fully set forth below under Reporting, with the final payment subject to the satisfaction of the condition precedent of submittal of complete invoicing and reporting information due on or before July 15 of the applicable funding year. The CITY shall pay such invoices within thirty (30) days after receipt thereof, provided the CITY is satisfied that such expenses have been incurred within the scope of this AGREEMENT and that the SUBRECIPIENT is in compliance with the terms and conditions of this AGREEMENT. The thirty (30) day period will discontinue if the reimbursement request is determined to be incomplete and will restart the thirty-day timeline once the remaining required elements have been submitted.

Failure to provide any of the required documentation and reporting will cause the CITY to withhold all or a portion of a request for reimbursement until such documentation and reporting has been received and approved by the CITY.

D. Use of Funds

The SUBRECIPIENT agrees to use said funds pursuant to this AGREEMENT to pay for necessary and reasonable costs allowable under federal law and regulations to operate said program only. Said amounts shall include and will be limited to, street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, housing relocation and stabilization services, short-term and medium-term rental assistance, and Homeless Management Information Systems ("HMIS") data contribution as set forth in 24 CFR § 576.101 – § 576.107. Allowable program costs are detailed in the Budget, as set forth in **Exhibit B**, attached hereto and by this reference incorporated herein. The SUBRECIPIENT'S failure to perform as required may, in addition to other remedies set forth in this AGREEMENT, result in readjustment of the amount of funds the CITY is otherwise obligated to pay to the SUBRECIPIENT pursuant to the terms hereof. The SUBRECIPIENT agrees that the homeless shelter/services under said program shall be available for the entire period during which said funds are provided.

E. Condition of Funding

(1) The CITY advises the SUBRECIPIENT that a significant change in entitlement funding may result in a change in the current process utilized by the CITY to determine funding allocations. The SUBRECIPIENT acknowledges that the obligation of the CITY is contingent upon the availability of Federal, State or Local government funds, which are appropriated or allocated for the payment of such an obligation. If funding levels are significantly affected by Federal budgeting or if funds are not allocated and available for the continuance of the function performed by the SUBRECIPIENT, this AGREEMENT may be terminated by the CITY at the end of the period for which funds are available. At the earliest opportunity, the CITY shall notify the SUBRECIPIENT of any service which may be affected by a shortage of funds. No penalty shall accrue to the CITY in the event this provision is exercised and the CITY shall not be liable for any damages as a result of termination under this provision of this AGREEMENT. Nothing herein shall be construed as obligating the CITY to expend funds in excess of appropriations authorized by law.

(2) The SUBRECIPIENT shall allow representatives of the CITY or HUD to inspect facilities which are used in connection with the AGREEMENT or which implement programs funded under this AGREEMENT.

F. Matching

The SUBRECIPIENT is required to make matching contributions to supplement the ESG program in an amount that equals or exceeds the amount of ESG funds provided by HUD through the CITY. Such contributions shall be entirely consistent with the Matching Requirements as outlined by 24 CFR § 576.201. The anticipated source and

amount of all matching funds contributed by the SUBRECIPIENT will be enumerated in **Exhibit B**, Final Budget.

G. Program Income

- (1) **Definition.** Program income means, as provided by 2 CFR 200.80, gross income received by the SUBRECIPIENT directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. For purposes of ESG, program income will also include any amount of a security or utility deposit returned to the SUBRECIPIENT.
- (2) **Use.** The SUBRECIPIENT shall use all income received from said funds only for the same purposes for which said funds may be expended pursuant to the terms and conditions of this AGREEMENT.
- (3) **Counts toward Matching.** Costs paid by program income may count toward meeting the matching requirements, provided the costs are eligible ESG costs that supplement the program.

H. Separation of Accounts

All funds received by the SUBRECIPIENT from the CITY pursuant to this AGREEMENT shall be maintained separate and apart from any other funds of the SUBRECIPIENT, or of any principal or member of the SUBRECIPIENT, in an account (the "Account") at a federally insured banking or savings and loan institution with record keeping of such Accounts maintained pursuant to applicable legal requirements. The SUBRECIPIENT shall keep all records of the Account in a manner that is consistent with generally accepted accounting principles. No monies shall be withdrawn from the Account except for expenditures relating to essential services, homeless prevention, and/or operations costs, as authorized hereunder. All disbursements from the Account shall be for obligations incurred in the performance of this AGREEMENT and shall be supported by contracts, invoices, vouchers, and other data, as appropriate, evidencing the necessity of such expenditure. The CITY may withhold payment allocation requests if the SUBRECIPIENT fails to comply with the above requirements until such compliance is demonstrated.

I. Expenditure of Funds

Much like how HUD requires the CITY, pursuant to 24 CFR 576.203, to expend all of the grant funds for eligible activity costs within 24 months after the date that HUD signs the grant agreement with the CITY, it is a requirement for the SUBRECIPIENT to expend all of the grant funds for eligible activity costs within the aforementioned period. For the purposes of this paragraph, expenditure means either an actual cash disbursement for a direct charge for a good/service or an indirect cost, or the accrual of a direct charge for a good/service or an indirect cost. Failure to expend said funds within said timeframe can result in a reallocation of funds.

J. Prohibited Use

- (1) **Generally.** The SUBRECIPIENT hereby certifies and agrees that it will not use funds provided through this AGREEMENT to pay for meals for persons other than those identified as homeless or at risk of homelessness. Said funds shall not be used for entertainment purposes or for gifts. The SUBRECIPIENT certifies that it will not use said funds for illegal or dishonest conduct, rather, fund use will remain in compliance with all applicable federal, state, and local laws, including applicable laws not outlined in this AGREEMENT.
- (2) **Lobbying.** The SUBRECIPIENT certifies and agrees that it will comply with federal law (31 U.S.C. 1352) and regulations found at 24 CFR Part 87, which provide that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, or an officer or employee of a Member of

Congress in connection with awarding of any federal contract, the making of any federal grant or loan, entering into any cooperative agreement and the extension, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The SUBRECIPIENT shall sign a certification to that effect in a form as set forth in **Exhibit C**, attached hereto and by this reference incorporated herein. The SUBRECIPIENT shall submit said signed certification to the CITY prior to performing any of its obligations under this AGREEMENT and prior to any obligation arising on the part of the CITY to pay any sums to the SUBRECIPIENT under the terms and conditions of this AGREEMENT. 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, the undersigned shall complete and submit a "Disclosure Form to Report Lobbying," in accordance with its instructions (see **Exhibit D**).

IV. **NOTICES**

The SUBRECIPIENT and the CITY agree that all notices required by this AGREEMENT shall be made in writing and delivered via mail (postage prepaid); commercial courier; personal delivery; or sent by facsimile or other electronic means (provided that receipt is confirmed). Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this AGREEMENT shall be addressed to the individuals in the capacities indicated below, unless modified by subsequent written notice.

Communication and details concerning the AGREEMENT shall be delivered to the office of, and directed to, the following representatives:

CITY:

Mikelle Daily
Community Development Analyst
City of Santa Ana
Community Development Agency (M-25)
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702-1988
(714) 667-2256
(714) 647-6549 FAX
mdaily@santa-ana.org

SUBRECIPIENT:

V. **GENERAL CONDITIONS**

A. **Coordination with Continuum of Care**

The SUBRECIPIENT must work with the Continuum of Care ("CoC") to ensure the screening, assessment, and referral of program participants are consistent with the CITY's written standards for providing ESG assistance as described in its consolidated plan. The SUBRECIPIENT must keep documentation evidencing the use of, and written intake procedures for, the centralized or coordinated assessment system(s) developed by the CoC in accordance with the requirements established by HUD. See 24 CFR 576.400.

B. Evaluation of Program Participants Eligibility and Needs

The SUBRECIPIENT must conduct evaluations and re-evaluations to determine the eligibility of each individual or family's eligibility for ESG assistance in accordance with 24 CFR 576.401.

C. Terminating Assistance

If a program participant violates program requirements, the SUBRECIPIENT may terminate the assistance in accordance with a formal process established by the SUBRECIPIENT that recognizes the rights of individuals affected. See 24 CFR 576.402

D. Shelter and Housing Standards

The SUBRECIPIENT certifies that shelters and housing supported by ESG funds and used by ESG beneficiaries will conform to 24 CFR 576.403.

E. Homeless Involvement

The SUBRECIPIENT certifies that it will involve, to the maximum extent practicable, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities. See 24 CFR 576.405(c) and 42 USC 11375(d).

F. Independent Contractor

Nothing contained in this AGREEMENT is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The SUBRECIPIENT and its subcontractors shall at all times remain independent contractors with respect to the services to be performed under this AGREEMENT. The CITY shall be exempt from payment of any Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the SUBRECIPIENT is an independent contractor.

G. Subcontracts

- (1) Content Requirements. The SUBRECIPIENT will include all relevant provisions of this AGREEMENT in all subcontracts entered into as part of the activities undertaken in furtherance of this AGREEMENT and will take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of regulations issued by any federal agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 (Economic Opportunities for Low- and Very Low-Income Persons) and will not allow any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- (2) Submission to the CITY. The SUBRECIPIENT must submit all subcontracts and other agreements that relate to this AGREEMENT to the CITY.

H. Licensing

The SUBRECIPIENT agrees to obtain and maintain all required licenses, registrations, accreditation, and inspections from all agencies governing its operations. The SUBRECIPIENT shall ensure that its staff and subcontractors shall also obtain and maintain all required licenses, registrations, accreditation and inspections from all agencies governing the SUBRECIPIENT's operations hereunder. Such licensing requirements include obtaining a City business license, as applicable.

I. Responsibilities Toward Employees

The SUBRECIPIENT accepts full responsibility for payment of any and all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholdings, social security withholdings, and any and all other taxes or payroll withholdings required for all employees engaged in the performance of the work and activities authorized by the AGREEMENT. The SUBRECIPIENT accepts full responsibility for providing workers with proper safety equipment and taking any and all necessary precautions to guarantee the safety of workers or persons otherwise affected.

J. Insurance and Bonding

(1) Generally. The SUBRECIPIENT shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, or damage to property (including property of Grantee) caused by the negligent acts or omissions, or negligent conduct of the SUBRECIPIENT, its employees, agents or subcontractors, to the extent permitted by law, in connection with the activities pursuant to this AGREEMENT.

The SUBRECIPIENT shall comply with the bonding and insurance requirements of 2 CFR 200.427, and 2 CFR 200.447.

The SUBRECIPIENT shall undertake self-insurance, or shall obtain, at its sole cost, a policy or policies of commercial general liability insurance, or equivalent form.

Such insurance shall: (1) name the City of Santa Ana, its officers, agents, employees and volunteers as additional insureds; (2) be primary with respect to insurance or self-insurance programs maintained by the CITY; (3) contain standard separation of insureds provisions; and (4) give to the CITY prompt and timely notice of claim made or suit instituted arising out of the SUBRECIPIENT's operations hereunder.

(2) Limits. The SUBRECIPIENT shall maintain, at all times, the following minimum levels of Insurance, and shall, without in any way altering its liability, obtain, pay for, and maintain insurance for the coverages and amounts of coverage not less than those set forth below:

- a. Workers' Compensation. Amount must comply with State and Federal Laws
- b. Comprehensive General Liability. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage resulting from any one occurrence, including the following coverages:
 - i. Premises and Operations; and

- ii. Broad Form Commercial General Liability Endorsement to include blanket contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the SUBRECIPIENT); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.
- c. The SUBRECIPIENT's self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the CITY.

(3) Proof of Insurance. The SUBRECIPIENT shall furnish the CITY's Clerk of the Council with an insurance certificate from insurance carrier certifying that it carries such insurance and that the policy shall not be canceled nor the coverage reduced except upon thirty (30) days prior notice to the CITY.

The SUBRECIPIENT shall, prior to exercising any right under this AGREEMENT:

- a. furnish properly executed certificates of insurance and additional insured endorsement to the CITY which shall clearly evidence all coverage required above;
- b. provide that such insurance shall not be materially changed or terminated except on thirty (30) days prior written notice to the CITY;
- c. maintain such insurance for the period covered by this AGREEMENT; and
- d. replace such certificates for policies expiring prior to the expiration of this AGREEMENT.

(4) Company Rating. All insurance coverage shall be written with a company having an A.M. Best Rating of "A" or better and financial size of VIII or larger.

(5) Failure to Comply. In the event of any failure by the SUBRECIPIENT to comply with these provisions, the CITY may, after notice to the SUBRECIPIENT, suspend the program for cause until there is full compliance.

K. Zoning.

The SUBRECIPIENT agrees that any facility/property used in furtherance of said program shall be specifically zoned and permitted for such use(s) and activity(ies). Should the SUBRECIPIENT fail to have the required land entitlement and/or permits, thus violating any local, state, or federal rules and regulations relating thereto, the SUBRECIPIENT shall immediately make good-faith efforts to gain compliance with local, state, or federal rules and regulations following written notification of said violation(s) from the CITY or other authorized citing agency. The SUBRECIPIENT shall notify the CITY immediately of any pending violations. Failure to notify the CITY of pending violations, or to remedy such known violation(s), shall result in termination of grant funding hereunder. The SUBRECIPIENT must make all corrections required to bring the facility/property into compliance with the law within sixty (60) days of notification of the violation(s); failure to gain compliance within such time shall result in termination of grant funding hereunder.

L. Displacement and Relocation.

The SUBRECIPIENT must assure that it has taken all reasonable steps to minimize displacement of persons. Relocation must be consistent with requirements as set forth in 24 CFR § 576.408.

M. Provisions Required by Law Deemed Inserted.

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the AGREEMENT shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

VI. ASSURANCES AND CERTIFICATIONS

A. Non-Profit Status

The SUBRECIPIENT certifies that:

(1) The SUBRECIPIENT is a duly organized and existing non-profit corporation in good standing and authorized to do business under the laws of the State of California and in possession of required non-profit status under the United States Internal Revenue Code [for example, 26 USC § 501(c)(3)]. The SUBRECIPIENT has full right, power, and lawful authority to accept the funding hereunder and to undertake all obligations as provided herein and the execution, performance, and delivery of this AGREEMENT by the SUBRECIPIENT has been fully authorized by all requisite actions on the part of the SUBRECIPIENT.

(2) If the SUBRECIPIENT's non-profit status changes at anytime during this AGREEMENT, it will advise the CITY within 15 days.

(3) If the SUBRECIPIENT is a private non-profit, it hereby agrees that the members of its Board of Directors will receive no compensation, directly or indirectly, other than reimbursement for expenses, from any funds generated from or because of the ESG program, for their services.

(4) As a non-profit, the SUBRECIPIENT acknowledges that administration of its operation and services are subject to the requirements as established in 2 CFR 200.

B. Adherence to Federal, State, and Local Laws and Regulations

(1) General. The SUBRECIPIENT agrees to comply with all requirements of the ESG program and applicable cross-cutting Federal, State, and Local requirements.

(2) Economic Opportunities for Low- and Very Low-income Persons. The SUBRECIPIENT shall ensure that employment and other economic opportunities generated by the Program shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

(3) Civil Rights. The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of the Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 41 CFR Chapter 60.

(4) Nondiscrimination and Equal Employment Opportunity. During the performance under this AGREEMENT, the SUBRECIPIENT shall not discriminate against any employee or applicant for employment

based on race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law.

The SUBRECIPIENT shall take affirmative action to ensure that all applicants and employees are treated without regard to race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, and sexual orientation.

The SUBRECIPIENT shall comply with all provisions of Executive Order 11246, Equal Employment Opportunity, as amended by Executive Orders 11375 and 12086.

(5) Nondiscrimination and Equal Opportunity in Participation. The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). The SUBRECIPIENT shall not discriminate against any participant on the ground of race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familiar status, sexual orientation, or any other basis prohibited by applicable law. The SUBRECIPIENT shall, through affirmative outreach, make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. The SUBRECIPIENT must take appropriate steps to ensure effective communication with persons with disabilities.

(6) Americans with Disabilities Act. The SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities Act which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and Local government services, and public accommodations.

(7) Fair Housing. Under section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funded sub-recipients. The SUBRECIPIENT has a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act.

C. Falsification of Information

The SUBRECIPIENT represents and warrants that it has made no false statements to the CITY in the process of obtaining this award of the ESG Funds.

D. Drug Free Workplace

The SUBRECIPIENT represents and warrants that it has established the following drug-free workplace policy:

- (1) The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace for any employee involved in a federally funded program.
- (2) As an employee working in conjunction with a federally funded program, the employees of the SUBRECIPIENT will be required to:
 - a. Abide by the terms above in statement (1), and
 - b. Notify the appropriate SUBRECIPIENT authorities and CITY officials of any criminal drug statute conviction for a violation occurring in the workplace. Such notification shall be made no later than five (5) days after conviction.
- (3) The CITY and the United States Department of Housing and Urban Development will be notified within

ten days after receiving notice of any such violation.

- (4) Within thirty (30) days of receiving such notice, appropriate personnel action will be taken against such employee, up to and including termination.
- (5) Each such employee shall be required to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or Local health, law enforcement, or other appropriate agency.

E. Religious Organization

The SUBRECIPIENT may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of said program or services. If the SUBRECIPIENT conducts such activities, the activities must be offered separately, in time or location, from said programs or services, and participation must be voluntary for the program participants.

The SUBRECIPIENT shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

If the SUBRECIPIENT is a religious organization, it retains its independence from Federal, State, and Local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities.

The SUBRECIPIENT agrees that rehabilitation of structures by the religious organization in connection with said program must be in sound accord with the provisions under 24 CFR § 576.406.

F. Additional Terms between the CITY and HUD

The SUBRECIPIENT agrees further that it shall be bound by the standard terms and conditions used in the Grant Agreement between HUD and the CITY and such other rules, regulations, or requirements as HUD may reasonably impose in addition to the aforementioned assurances at or subsequent to the execution of this AGREEMENT by the parties hereto.

G. OSHA

Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous, or dangerous to the participants' health or safety.

H. Hatch Act

The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this AGREEMENT, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C. Section 1501 et seq.

I. Davis-Bacon Act

All laborers and mechanics employed by contractors or subcontractors in the performance of construction work, including alterations and repairs, in excess of \$2,000.00, financed in whole or in part with federal funds shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. sections 276a - 276a-5. Any such construction contract shall include and comply with the required contract provisions and rules set forth in 29 C.F.R. §5.5. Further, the payroll reports (along with the "Statement of Compliance") and basic records are required to be maintained and submitted, or made available, pursuant to 29 C.F.R. §5.5(a)(3). No payment, advance, grant, loan or guarantee of funds shall be approved by the federal agency unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of 29 C.F.R. §5.5. A breach of the contract clauses in 29 C.F.R. §5.5 may be grounds for termination of the contract, and for debarment as a contractor/subcontractor, as provided in 29 C.F.R. §5.12. Labor standards interviews/investigations shall be made as necessary to assure compliance. See 29 C.F.R. §5.6(a)(3).

VII. ADMINISTRATIVE REQUIREMENTS

A. Generally

The following requirements and standards must be complied with: 2 CFR Part 200, et al. SUBRECIPIENT shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.318-326.

B. Procurement

(1) **Compliance.** The SUBRECIPIENT shall comply with current HUD and CITY policies concerning the procurement of equipment, goods, and services, and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. The SUBRECIPIENT shall report to the CITY all program assets (unexpended program income, property, equipment, etc.), and upon the CITY'S request, such assets shall revert to the CITY upon termination of this AGREEMENT.

(2) Pursuant to 2 CFR 200.331 (a) (4), the Indirect Cost Rate for the SUBRECIPIENT'S award shall be an approved federally recognized cost rate negotiated between the SUBRECIPIENT and the Federal government, or, if no cost rate exists, the de minimis indirect cost rate as defined in 2 CFR 200.414(b) Indirect (F & A) costs shall be used. For this agreement, the de minimis indirect cost of 10% will apply.

(3) **Use and Reversion of Assets.** The use and disposition of equipment under this AGREEMENT shall be in compliance with the requirements of 2 CFR Part 200.

C. Reporting

Reporting requirements must conform to the policies and procedures as established by the CITY and 24 CFR § 576.500. The SUBRECIPIENT shall submit to the CITY, on or before the 15th day of October, January, April, and July, as part of the Quarterly Report:

- (1) **Payment Request.** An original request for reimbursement and true copies of invoices, receipts, agreements, or other documentation supporting and evidencing how the ESG Funds have been expended during the applicable quarter.

- (2) Quarterly Activities and written cumulative (year-to-date) reports of activities, program accomplishments, new program information, and up-to-date program statistics on expenditures, caseload and activities. Failure to provide any of the required documentation and reporting will cause the CITY to withhold all or a portion of a request for reimbursement until such documentation and reporting has been received and approved by the CITY.
- (3) Matching. Quarterly certification of match, plus documentation of match source.
- (4) Any other such reports as the CITY (or HUD) shall reasonably require and/or request, including but not limited to the following information: monthly records of all ethnic and racial statistics of persons and families benefited by the SUBRECIPIENT in the performance of its obligations under this AGREEMENT.

D. Record Keeping

Sufficient records must be established and maintained to enable the CITY and HUD to determine whether the ESG requirements are being met. Record keeping requirements must conform to the policies and procedures as established by the CITY. All accounting records, reports, all evidence pertaining to costs, expenses, and ESG Funds of the SUBRECIPIENT, and all documents related to this AGREEMENT shall be maintained and kept available at the SUBRECIPIENT'S office or place of business for the duration of the AGREEMENT and thereafter for five (5) years post-completion of an audit in conformity with the ESG requirements, except as hereinafter provided relating to retention of any records or documentation existing, created, or maintained in compliance with Lead-based Paint regulations, which likely require longer retention as outlined below. Records which relate to (a) complaints, claims, administrative proceedings or litigation arising out of the performance of this AGREEMENT, or (b) costs and expenses of this AGREEMENT to which the CITY or any other governmental agency takes exception, shall be retained beyond the five (5) years until complete resolution or disposition of such appeals, litigation claims, or exceptions. All said records must be retained for the greater of the aforementioned duration or the periods specified in 24 CFR 576.500(y). All records relating to, or created or maintained in compliance with, the Lead-Based Paint regulations shall be retained and maintained by the SUBRECIPIENT indefinitely, including without limitation, all inspection report(s), disclosure statement(s), and clearance report(s). Copies made by microfilming, photocopying, or similar methods may be substituted for the original records. The CITY, HUD and auditors shall have the right to access all the SUBRECIPIENT records for as long as the records are retained by the SUBRECIPIENT. In the event the SUBRECIPIENT does not make the above-referenced documents available within the City of Santa Ana, California, the SUBRECIPIENT agrees to pay all necessary and reasonable expenses incurred by the CITY in conducting any audit at the location where said records and books of account are maintained.

The SUBRECIPIENT agrees to meet the requirements set forth in 24 CFR § 576.500.

E. Homeless Management Information Systems (HMIS)

- (1) Generally. The SUBRECIPIENT 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 with the express knowledge and written consent of the CITY, a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS.
- (2) HMIS Agency Agreement. The SUBRECIPIENT shall have an agreement in place with the HMIS lead agency to participate in the regionally HMIS system. A copy of the SUBRECIPIENTS agreement with the HMIS lead agency shall be attached to this agreement as **Exhibit F**. In the case of Domestic Violence service providers

or other agencies prohibited from entering data into HMIS, documentation from the HMIS lead agency certifying that the SUBRECIPIENT is using a comparable database shall be attached to this agreement as **Exhibit E**.

(3) **HMIS Interagency Data Sharing Agreement.** The SUBRECIPIENT shall enter into an Interagency Data Sharing Agreement with the HMIS Lead Agency where the SUBRECIPIENT agrees to share HMIS data with other ESG funded agencies regarding clients that are served in ESG funded programs, unless prohibited by law. A copy of such agreement shall be attached as **Exhibit F-1**.

(A.) The SUBRECIPIENT agrees to provide 211OC with all required data needed to complete data analysis regarding project performance, data timeliness, or data quality.

F. Audit Report Requirements

The SUBRECIPIENT agrees that if the SUBRECIPIENT expends Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more in federal funds, the SUBRECIPIENT shall have an annual audit conducted by a certified public accountant in accordance with the standards as set forth and published by the United States Office of Management and Budget (2 CFR 200.501a). The SUBRECIPIENT shall provide the CITY with a copy of said audit by April 1 of the year following the program year in which this AGREEMENT is executed. Further, the SUBRECIPIENT shall comply and/or cause compliance with audit report(s) required by applicable provisions of the Lead-Based Paint Regulations as further detailed below.

VIII. EVALUATION AND MONITORING

A. Generally

The CITY will monitor the performance of the SUBRECIPIENT against goals and performance standards as required herein. The SUBRECIPIENT shall provide the CITY all necessary reporting information as required by the CITY in the administration and review of the Program. Substandard performance as determined by the CITY will constitute noncompliance with this AGREEMENT. If action to correct such substandard performance is not taken by the SUBRECIPIENT within a reasonable period of time after being notified by the CITY, contract suspension or termination procedures will be initiated.

B. Access to Records

The SUBRECIPIENT gives the CITY and HUD, including their authorized representative, access to and the right to examine all records, books, papers, items, emails, and documents, both physical and electronic, relating to the program.

C. Audit

The CITY shall have the right to audit and monitor any program income as a result of an ESG activity. Upon request by the CITY and for audit purposes, the SUBRECIPIENT further agrees to provide all files, records, and documents pertaining to related activities and clientele demographic data.

IX. LIABILITY

A. Generally

Each party to this AGREEMENT acknowledges that it will be liable for its own negligent acts or negligent omissions by or through itself, its employees, agents, and subcontractors. Each party further agrees to defend itself and themselves, and to pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this AGREEMENT shall impute or transfer any such liability from one to the other. In other words, the SUBRECIPIENT agrees to be fully responsible for its negligent acts or omissions, or any intentional tortuous acts which result in claims or suits against the CITY, and agrees to be liable for any damages proximately caused by said acts or omissions. Nothing herein shall be construed as consent by a State or CITY agency or subdivision to be sued by third parties in any matter arising out of any contract, and nothing herein is intended to serve as a waiver of sovereign immunity where sovereign immunity applies.

B. CITY not Liable for Funds

The SUBRECIPIENT further acknowledges that the source of the ESG Funds is a federal pass-through grant to the SUBRECIPIENT. The CITY shall have no obligation to advance or pay the SUBRECIPIENT with any funds other than the ESG Funds the CITY receives from HUD.

C. Hold Harmless

The SUBRECIPIENT shall defend, indemnify and save harmless the CITY, its officers, agents, employees, representatives, volunteers, and student externs from and against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the CITY, and shall defend, indemnify and save harmless the CITY, its officers, agents, employees, representatives, volunteers, and student externs from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, workers compensation claims and attorney fees/expenses for litigation or settlement, resulting from or arising out of the negligent or wrongful acts, errors or omissions of the SUBRECIPIENT, its officers, directors, employees, agents, subcontractors, and suppliers arising out of the SUBRECIPIENT's performance of this AGREEMENT.

X. ENVIRONMENTAL CONDITIONS

A. Generally

ESG activities are subject to environmental review by HUD under the environmental regulations in 24 CFR 50. The SUBRECIPIENT, or any contractor of the SUBRECIPIENT, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property.

The SUBRECIPIENT agrees to comply with all applicable environmental requirements insofar as they apply to the performance of this AGREEMENT, including but not limited to the Clean Air Act, the Federal Water Pollution Control Act and the Flood Disaster Protection Act. If applicable, the SUBRECIPIENT also shall comply with the Historic Preservation requirements of National Historic Preservation Act of 1966.

B. Lead-based paint remediation and disclosure

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants that were built before 1978.

C. Assignment of Responsibilities

By this AGREEMENT, the SUBRECIPIENT will accept assignment from the CITY of all responsibilities set forth in Subpart K of 24 CFR 35.

D. Compliance with Subpart K

The purpose of Subpart K is to establish procedures to eliminate as far as practicable lead-based paint (“LBP”) hazards in a residential property that receives Federal assistance under certain HUD programs for acquisition, leasing, support services, or operation. In connection with the grant funds under this AGREEMENT, the CITY requires that the SUBRECIPIENT comply and show evidence of compliance with all applicable subparts of 24 CFR 35, and especially, Subpart K (“LBP Regs”).

The SUBRECIPIENT shall conduct the following activities for the dwelling unit, common areas servicing the dwelling unit, and the exterior surfaces of the building in which the dwelling unit is located:

- (1) A visual assessment of all painted surfaces in order to identify deteriorated paint;
- (2) Paint stabilization of each deteriorated paint surface, and clearance, in accordance with §§ 35.1330(a) and (b), before occupancy of a vacant dwelling unit or, where a unit is occupied, immediately after receipt of Federal assistance; and
- (3) Ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a), if the dwelling unit has a continuing, active financial relationship with a Federal housing assistance program, except that mortgage insurance or loan guarantees are not considered to constitute an active programmatic relationship for the purposes of this part.
- (4) And, notice to occupants in accordance with §§ 35.125(b)(1) and (c), describing the results of the clearance examination.

E. Notification of LBP Hazard

The SUBRECIPIENT shall provide to all occupants of housing:

- (1) In accordance with Section 35.130 of the LBP Regs - the LBP hazard information pamphlet. The pamphlet shall be the EPA/HUD/Consumer Product Safety Commission lead hazard information pamphlet or an EPA-approved equivalent.

The current form and version of the pamphlet can be found at:

<http://www.hud.gov/offices/lead/library/enforcement/fs-discl.pdf>

- (2) In accordance with 24 CFR 35, Subpart A, all available information and knowledge regarding the presence of LBP and LBP hazards prior to leasing a housing unit.

- (3) In accordance with 24 CFR 35, Subpart A, notification in writing of the results of the presumption of LBP and/or LBP hazards, results of any lead hazard evaluation, and any lead hazard reduction work.

F. LBP Information Summary

For purposes of information only and in no respect intended to be a representation or warranty of the provisions of the LBP Regulations, the CITY has caused to be prepared an information summary relating to the LBP Regulations and Application to dwelling units that may be occupied by recipients of services and/or funding from the SUBRECIPIENT under this AGREEMENT. CITY staff will cooperate with and be available to the SUBRECIPIENT to assist in implementation of compliance with the LBP Regs as to residential dwelling units to be assisted by the SUBRECIPIENT. The parties acknowledge and agree the CITY shall not be liable or responsible for the accuracy of such summary, and the SUBRECIPIENT is directed to the LBP Regulations and implementing guidance published and provided by HUD relating to compliance with such LBP Regulations.

G. Exemptions

Section 35.115(a) provides exemptions from Subparts B through R. For example, lead-based paint requirements do not apply to housing assistance if the assistance lasts less than one hundred (100) days.

XI. CONFLICTS OF INTEREST

The SUBRECIPIENT shall comply with 2 CFR 200.112 with respect to the use of program funds to procure services, equipment, supplies, or other property. With respect to all other decisions involving the use of program funds, the following restriction shall apply: No person who is an employee, agent, consultant, officer, or elected or appointed official of the SUBRECIPIENT and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or 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 there under, either for himself or herself, or for those with who he or she has family or business ties, during his or her tenure or for one (1) year thereafter.

The SUBRECIPIENT agrees to abide by the ESG Program's Conflict of Interest provisions as expressly detailed in 24 CFR § 576.404 regarding Organizational Conflicts of Interest and Personal Conflicts of Interest. All contractors of the SUBRECIPIENT must comply with the same requirements that apply to the SUBRECIPIENT under this section.

XII. ASSIGNABILITY

None of the duties of, or work to be performed by, the SUBRECIPIENT under this AGREEMENT shall be subcontracted or assigned to any agency, consultant, or person without the prior written consent of the CITY. The SUBRECIPIENT must submit all subcontracts and other agreements that relate to this AGREEMENT to the CITY. No subcontract or assignment shall terminate or alter the legal obligations of the SUBRECIPIENT pursuant to this AGREEMENT.

XIII. EXCLUSIVITY OF AGREEMENT

This AGREEMENT supersedes any and all other agreements, either oral or in writing, between the parties hereto

with respect to the use of the CITY's ESG Funds by the SUBRECIPIENT and contains all the covenants and agreements between the parties with respect to such ESG Funds in any manner whatsoever. Each party to this AGREEMENT acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement or amendment hereto shall be effective unless executed in writing and signed by both the CITY and the SUBRECIPIENT.

XIV. AMENDMENTS OR MODIFICATIONS

The SUBRECIPIENT shall not obligate, encumber, spend, or otherwise utilize program funds for any activity or purpose not included or not in conformance with the budget as apportioned and as submitted to the CITY unless:

- (1) The SUBRECIPIENT has received explicit written approval from the CITY to undertake such actions, or
- (2) Budget changes may be made among approved program activities and among approved budget categories so long as the specific project activity has been approved, there is no change to the total grant amount, and the changes to the budget are documented.

Any program modification request by the SUBRECIPIENT must be requested at least forty-five (45) days prior to the end of the term of this AGREEMENT. No modification to this AGREEMENT shall be binding by either party unless in writing and signed by both parties.

In the event that the CITY approves any amendment to the funding allocation, the SUBRECIPIENT shall be notified in writing and such notification shall constitute an official amendment.

The CITY may, at its discretion and upon provision of proper notice to the SUBRECIPIENT, amend this AGREEMENT to conform with changes in Federal, State, and/or the CITY laws, regulations, guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this AGREEMENT.

XV. VIOLATION OF TERMS AND CONDITIONS

A. Termination

If, due to any cause, the SUBRECIPIENT fails to comply with the terms, conditions or requirements of this AGREEMENT, or any prior AGREEMENT whereby ESG funds were received by the SUBRECIPIENT, whether stated in a Federal statute or regulation, an assurance, a State plan or application, a notice of award, or elsewhere, the CITY may terminate or suspend this AGREEMENT in accordance with 2 CFR 200.339 and in accordance with 2 CFR 200.340 by giving written notice, and the CITY may request in writing that all or some of the grant funds be returned even if the SUBRECIPIENT has expended the funds.

If the SUBRECIPIENT reports inaccurately, or if on audit there is a disallowance of certain expenditures, the SUBRECIPIENT agrees to remedy the acts or omissions causing the disallowance and repay the CITY all amounts spent in violation thereof. If the SUBRECIPIENT engaged in fraudulent activity to obtain and/or justify expenditure of the ESG funds granted hereunder, the SUBRECIPIENT shall be required to reimburse the CITY of all such funds that were obtained and/or spent under fraudulent circumstances, and the CITY reserves the right to take other remedies that may be legally available.

The SUBRECIPIENT agrees to return all funds as requested by the CITY under this section within thirty (30) days of receipt of the written request.

Any objections regarding terminations or suspensions shall be made by the SUBRECIPIENT in writing and mailed to the CITY pursuant to the above NOTICES section.

XVI. CLOSE-OUT

The SUBRECIPIENT agrees to comply with the closeout procedures detailed in 2 CFR 200.343, including the following:

1. SUBRECIPIENT must submit, no later than ninety (90) calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award;
2. Unless the CITY authorizes an extension, SUBRECIPIENT must liquidate all obligations incurred under the Federal award not later than ninety (90) calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award;
3. SUBRECIPIENT must promptly refund any balances of unobligated cash that the CITY paid in advance or paid and that is not authorized to be retained by SUBRECIPIENT for use in other projects (See OMG Circular A-129 and 2 CFR 200.345);
4. SUBRECIPIENT must account for any real and personal property acquired with Federal funds or received from the Federal government in accordance with 2 CFR 200.310-200.316 and 200.329; and,
5. The CITY should complete all closeout actions for the Federal award no later than one year after receipt and acceptance of all required final reports.

XVII. VALIDITY AND SEVERABILITY

The invalidity in whole or in part of any provision of this AGREEMENT shall not void or affect the validity of any other provision of this AGREEMENT. Whenever possible, each provision of this AGREEMENT shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this AGREEMENT.

XVIII. LAWS GOVERNING THIS AGREEMENT

This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, and all applicable federal laws and regulations.

XIX. WAIVER

No delay or omission by the CITY hereto to exercise any right or power accruing upon any noncompliance or default by the SUBRECIPIENT with respect to any of the terms of this AGREEMENT shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

XX. AGREEMENT DOCUMENT, EXHIBITS, AND ATTACHMENTS

All of the attachments and exhibits attached to this AGREEMENT are deemed incorporated by reference. This document may be executed in three (3) counterparts, each of which shall be deemed to be an original.

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this AGREEMENT, and shall indemnify the CITY fully, including reasonable costs and attorney's fees, for any injuries or damages to the CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the date and year first above written.

ATTEST:

CITY OF SANTA ANA
a municipal corporation

DAISY GOMEZ
Clerk of the Council

KRISTINE RIDGE
City Manager

APPROVED AS TO FORM:

SONIA CARVALHO
City Attorney



By: **RYAN O. HODGE**
Assistant City Attorney

SUBRECIPIENT:

Tax ID: _____
DUNS #: _____

RECOMMENDED FOR APPROVAL:

STEVEN A. MENDOZA
Executive Director
Community Development Agency

**EMERGENCY SOLUTIONS GRANT
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF SANTA ANA
AND
SANTA ANA POLICE DEPARTMENT
(24 CFR Parts 91 and 576)**

THIS GRANT AGREEMENT, is hereby made and entered into this _____, 2020 by and between the City of Santa Ana, a charter city and municipal corporation of the State of California, herein called the "CITY" and SANTA ANA POLICE DEPARTMENT, a California nonprofit organization, herein called the "SUBRECIPIENT".

RECITALS:

1. The CITY is the recipient of Emergency Solutions Grant ("ESG") funds from the United States Department of Housing and Urban Development ("HUD"), pursuant to subtitle B of title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11371–11378], for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, and for homelessness prevention and rapid re-housing assistance. Catalogue of Federal Domestic Assistance ("CFDA") 14.231 and Federal Award Identification Number (FAIN) E-20-MC-06-0508.

2. The CITY has approved the provision of federal funds under the ESG to be used in the operation of an emergency solutions program ("program") for the homeless or at-risk of homelessness of the City of Santa Ana as further described by **Exhibit A**, Scope of Work, attached hereto and by this reference incorporated herein.

3. The SUBRECIPIENT represents that it has the requisite qualifications, expertise, and experience in the provision of emergency solutions programs for the homeless or at-risk of homelessness and is willing to use said federal funds to operate said program.

4. The SUBRECIPIENT agrees to assist individuals and families that are homeless or at risk of homelessness in obtaining appropriate supportive services including, but not limited to: temporary and permanent housing, relocation and stabilization services, rapid re-housing assistance, medical and mental health treatment, counseling supervision, and other services essential for achieving independent living, as well as other federal, state, local and private assistance available for such individuals.

5. The SUBRECIPIENT has agreed to be reimbursed for the above services in an amount not to exceed \$ **XX,XXX** in grant funding for Data Collection and Outreach and Engagement Services.

6. This AGREEMENT is contingent upon the award of Emergency Solutions Grant funds from the United States Department of Housing and Urban Development.

7. The CITY and the SUBRECIPIENT have duly executed this AGREEMENT for the expenditure and utilization of said funds.

NOW THEREFORE, it is agreed by and between the parties that the foregoing Recitals are a substantive part of this AGREEMENT and the following terms and conditions are approved and together with all exhibits and attachments hereto, shall constitute the entire AGREEMENT between the CITY and the SUBRECIPIENT:

I. SCOPE OF PROGRAM**A. General Administration**

The SUBRECIPIENT agrees to implement this activity as set forth in detail in **Exhibit A**, Scope of Work, which shall provide a description of each activity, including the services to be performed, the person or entity providing the service, the estimated number of recipients of the service, and the manner and means of the services.

B. Levels of Accomplishment – Goals and Performance Measures

The SUBRECIPIENT shall be responsible to accomplish the levels of performance as set forth in **Exhibit A** and report such measures quarterly to the CITY. If the SUBRECIPIENT estimates such goals will not be met, the SUBRECIPIENT is to contact the CITY, at which time the CITY will determine if any adjustments to the grant award is appropriate.

C. Staffing

The SUBRECIPIENT shall ensure adequate and appropriate staffing is allocated to each ESG activity. Nothing contained in this AGREEMENT is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties.

II. TERM OF AGREEMENT

This AGREEMENT shall take effect on July 1, 2020, and shall terminate on June 30, 2021, unless otherwise cancelled or modified according to the terms of this AGREEMENT.

III. DISBURSEMENT AND FUNDS

The City was allocated **\$500,947** in Emergency Solutions Grant funds under the McKinney-Vento Homeless Assistance Act for fiscal year 2019-2020 from the Department of Housing and Urban Development. CITY agrees to pay to SUBRECIPIENT when, if and to the extent federal funds are received under provisions of the Act a sum not to exceed **\$XX,XXX** for SUBRECIPIENTS performance in accordance with the Budget attached hereto as “Exhibit B” during the period of this Agreement. Said sum shall be paid after CITY receives invoices submitted by SUBRECIPIENT as provided hereinabove.

A. Amount and Expenditure End Date

The CITY agrees to reimburse the SUBRECIPIENT a maximum amount not to exceed **\$XX,XXX** from Emergency Solutions Grant (ESG) funds, as outlined in **Exhibit B**, Final Budget, and such funds shall be expended by the SUBRECIPIENT on or before June 30, 2021. SUBRECIPIENT has the ability to adjust line item amounts in the Budget with the written approval of the CITY’s Executive Director of the Community Development Agency, so long as the total Budget amount does not increase.

B. Invoicing Procedures

The SUBRECIPIENT shall submit quarterly invoices (on or before the 15th day of October, January, April, and July) in a form prescribed by the CITY, detailing such expenses. Such schedule may be modified with the approval of the CITY.

C. Payment

Payment is subject to the receipt and approval of such invoices and quarterly activity reports, as hereinafter more fully set forth below under Reporting, with the final payment subject to the satisfaction of the condition precedent of submittal of complete invoicing and reporting information due on or before July 15 of the applicable funding year. The CITY shall pay such invoices within thirty (30) days after receipt thereof, provided the CITY is satisfied that such expenses have been incurred within the scope of this AGREEMENT and that the SUBRECIPIENT is in compliance with the terms and conditions of this AGREEMENT. The thirty (30) day period will discontinue if the reimbursement request is determined to be incomplete and will restart the thirty day timeline once the remaining required elements have been submitted.

Failure to provide any of the required documentation and reporting will cause the CITY to withhold all or a portion of a request for reimbursement until such documentation and reporting has been received and approved by the CITY.

D. Use of Funds

The SUBRECIPIENT agrees to use said funds pursuant to this AGREEMENT to pay for necessary and reasonable costs allowable under federal law and regulations to operate said program only. Said amounts shall include and will be limited to, street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, housing relocation and stabilization services, short-term and medium-term rental assistance, and Homeless Management Information Systems ("HMIS") data contribution as set forth in 24 CFR § 576.101 – § 576.107. Allowable program costs are detailed in the Budget, as set forth in **Exhibit B**, attached hereto and by this reference incorporated herein. The SUBRECIPIENT'S failure to perform as required may, in addition to other remedies set forth in this AGREEMENT, result in readjustment of the amount of funds the CITY is otherwise obligated to pay to the SUBRECIPIENT pursuant to the terms hereof. The SUBRECIPIENT agrees that the homeless shelter/services under said program shall be available for the entire period during which said funds are provided.

E. Condition of Funding

(1) The CITY advises the SUBRECIPIENT that a significant change in entitlement funding may result in a change in the current process utilized by the CITY to determine funding allocations. The SUBRECIPIENT acknowledges that the obligation of the CITY is contingent upon the availability of Federal, State or Local government funds, which are appropriated or allocated for the payment of such an obligation. If funding levels are significantly affected by Federal budgeting or if funds are not allocated and available for the continuance of the function performed by the SUBRECIPIENT, this AGREEMENT may be terminated by the CITY at the end of the period for which funds are available. At the earliest opportunity, the CITY shall notify the SUBRECIPIENT of any service which may be affected by a shortage of funds. No penalty shall accrue to the CITY in the event this provision is exercised and the CITY shall not be liable for any damages as a result of termination under this provision of this AGREEMENT. Nothing herein shall be construed as obligating the CITY to expend funds in excess of appropriations authorized by law.

(2) The SUBRECIPIENT shall allow representatives of the CITY or HUD to inspect facilities which are used in connection with the AGREEMENT or which implement programs funded under this AGREEMENT.

F. Matching

The SUBRECIPIENT is required to make matching contributions to supplement the ESG program in an amount that equals or exceeds the amount of ESG funds provided by HUD through the CITY. Such contributions shall be entirely consistent with the Matching Requirements as outlined by 24 CFR § 576.201. The anticipated source and

amount of all matching funds contributed by the SUBRECIPIENT will be enumerated in **Exhibit B**, Final Budget.

G. Program Income

- (1) **Definition.** Program income means, as provided by 2 CFR 200.80, gross income received by the SUBRECIPIENT directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. For purposes of ESG, program income will also include any amount of a security or utility deposit returned to the SUBRECIPIENT.
- (2) **Use.** The SUBRECIPIENT shall use all income received from said funds only for the same purposes for which said funds may be expended pursuant to the terms and conditions of this AGREEMENT.
- (3) **Counts toward Matching.** Costs paid by program income may count toward meeting the matching requirements, provided the costs are eligible ESG costs that supplement the program.

H. Separation of Accounts

All funds received by the SUBRECIPIENT from the CITY pursuant to this AGREEMENT shall be maintained separate and apart from any other funds of the SUBRECIPIENT, or of any principal or member of the SUBRECIPIENT, in an account (the "Account") at a federally insured banking or savings and loan institution with record keeping of such Accounts maintained pursuant to applicable legal requirements. The SUBRECIPIENT shall keep all records of the Account in a manner that is consistent with generally accepted accounting principles. No monies shall be withdrawn from the Account except for expenditures relating to essential services, homeless prevention, and/or operations costs, as authorized hereunder. All disbursements from the Account shall be for obligations incurred in the performance of this AGREEMENT and shall be supported by contracts, invoices, vouchers, and other data, as appropriate, evidencing the necessity of such expenditure. The CITY may withhold payment allocation requests if the SUBRECIPIENT fails to comply with the above requirements until such compliance is demonstrated.

I. Expenditure of Funds

Much like how HUD requires the CITY, pursuant to 24 CFR 576.203, to expend all of the grant funds for eligible activity costs within 24 months after the date that HUD signs the grant agreement with the CITY, it is a requirement for the SUBRECIPIENT to expend all of the grant funds for eligible activity costs within the aforementioned period. For the purposes of this paragraph, expenditure means either an actual cash disbursement for a direct charge for a good/service or an indirect cost, or the accrual of a direct charge for a good/service or an indirect cost. Failure to expend said funds within said timeframe can result in a reallocation of funds.

J. Prohibited Use

- (1) **Generally.** The SUBRECIPIENT hereby certifies and agrees that it will not use funds provided through this AGREEMENT to pay for meals for persons other than those identified as homeless or at risk of homelessness. Said funds shall not be used for entertainment purposes or for gifts. The SUBRECIPIENT certifies that it will not use said funds for illegal or dishonest conduct, rather, fund use will remain in compliance with all applicable federal, state, and local laws, including applicable laws not outlined in this AGREEMENT.
- (2) **Lobbying.** The SUBRECIPIENT certifies and agrees that it will comply with federal law (31 U.S.C. 1352) and regulations found at 24 CFR Part 87, which provide that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, or an officer or employee of a Member of

Congress in connection with awarding of any federal contract, the making of any federal grant or loan, entering into any cooperative agreement and the extension, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The SUBRECIPIENT shall sign a certification to that effect in a form as set forth in **Exhibit C**, attached hereto and by this reference incorporated herein. The SUBRECIPIENT shall submit said signed certification to the CITY prior to performing any of its obligations under this AGREEMENT and prior to any obligation arising on the part of the CITY to pay any sums to the SUBRECIPIENT under the terms and conditions of this AGREEMENT. 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, the undersigned shall complete and submit a "Disclosure Form to Report Lobbying," in accordance with its instructions (see **Exhibit D**).

IV. **NOTICES**

The SUBRECIPIENT and the CITY agree that all notices required by this AGREEMENT shall be made in writing and delivered via mail (postage prepaid); commercial courier; personal delivery; or sent by facsimile or other electronic means (provided that receipt is confirmed). Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this AGREEMENT shall be addressed to the individuals in the capacities indicated below, unless modified by subsequent written notice.

Communication and details concerning the AGREEMENT shall be delivered to the office of, and directed to, the following representatives:

CITY:

Mikelle Daily
Community Development Analyst
City of Santa Ana
Community Development Agency (M-25)
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702-1988
(714) 667-2256
(714) 647-6549 FAX
mdaily@santa-ana.org

SUBRECIPIENT:

David Valentin
Chief of Police
Santa Ana Police Department

60 Civic Center Plaza

Santa Ana, CA 92701
714-245-8249

V. **GENERAL CONDITIONS**

A. Coordination with Continuum of Care

The SUBRECIPIENT must work with the Continuum of Care ("CoC") to ensure the screening, assessment, and referral of program participants are consistent with the CITY's written standards for providing ESG assistance as described in its consolidated plan. The SUBRECIPIENT must keep documentation evidencing the use of, and written intake procedures for, the centralized or coordinated assessment system(s) developed by the CoC in accordance with the requirements established by HUD. See 24 CFR 576.400.

B. Evaluation of Program Participants Eligibility and Needs

The SUBRECIPIENT must conduct evaluations and re-evaluations to determine the eligibility of each individual or family's eligibility for ESG assistance in accordance with 24 CFR 576.401.

C. Terminating Assistance

If a program participant violates program requirements, the SUBRECIPIENT may terminate the assistance in accordance with a formal process established by the SUBRECIPIENT that recognizes the rights of individuals affected. See 24 CFR 576.402

D. Shelter and Housing Standards

The SUBRECIPIENT certifies that shelters and housing supported by ESG funds and used by ESG beneficiaries will conform to 24 CFR 576.403.

E. Homeless Involvement

The SUBRECIPIENT certifies that it will involve, to the maximum extent practicable, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities. See 24 CFR 576.405(c) and 42 USC 11375(d).

F. Independent Contractor

Nothing contained in this AGREEMENT is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The SUBRECIPIENT and its subcontractors shall at all times remain independent contractors with respect to the services to be performed under this AGREEMENT. The CITY shall be exempt from payment of any Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the SUBRECIPIENT is an independent contractor.

G. Subcontracts

- (1) Content Requirements. The SUBRECIPIENT will include all relevant provisions of this AGREEMENT in all subcontracts entered into as part of the activities undertaken in furtherance of this AGREEMENT and will take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of regulations issued by any federal agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 (Economic Opportunities for Low- and Very Low-Income Persons) and will not allow any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- (2) Submission to the CITY. The SUBRECIPIENT must submit all subcontracts and other agreements that relate to this AGREEMENT to the CITY.

H. Licensing

The SUBRECIPIENT agrees to obtain and maintain all required licenses, registrations, accreditation, and inspections from all agencies governing its operations. The SUBRECIPIENT shall ensure that its staff and subcontractors shall also obtain and maintain all required licenses, registrations, accreditation and inspections from all agencies governing the SUBRECIPIENT's operations hereunder. Such licensing requirements include obtaining a City business license, as applicable.

I. Responsibilities Toward Employees

The SUBRECIPIENT accepts full responsibility for payment of any and all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholdings, social security withholdings, and any and all other taxes or payroll withholdings required for all employees engaged in the performance of the work and activities authorized by the AGREEMENT. The SUBRECIPIENT accepts full responsibility for providing workers with proper safety equipment and taking any and all necessary precautions to guarantee the safety of workers or persons otherwise affected.

J. Insurance and Bonding

(1) Generally. The SUBRECIPIENT shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, or damage to property (including property of Grantee) caused by the negligent acts or omissions, or negligent conduct of the SUBRECIPIENT, its employees, agents or subcontractors, to the extent permitted by law, in connection with the activities pursuant to this AGREEMENT.

The SUBRECIPIENT shall comply with the bonding and insurance requirements of 2 CFR 200.427, and 2 CFR 200.447.

The SUBRECIPIENT shall undertake self-insurance, or shall obtain, at its sole cost, a policy or policies of commercial general liability insurance, or equivalent form.

Such insurance shall: (1) name the City of Santa Ana, its officers, agents, employees and volunteers as additional insureds; (2) be primary with respect to insurance or self-insurance programs maintained by the CITY; (3) contain standard separation of insureds provisions; and (4) give to the CITY prompt and timely notice of claim made or suit instituted arising out of the SUBRECIPIENT's operations hereunder.

(2) Limits. The SUBRECIPIENT shall maintain, at all times, the following minimum levels of Insurance, and shall, without in any way altering its liability, obtain, pay for, and maintain insurance for the coverages and amounts of coverage not less than those set forth below:

- a. Workers' Compensation. Amount must comply with State and Federal Laws
- b. Comprehensive General Liability. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage resulting from any one occurrence, including the following coverages:
 - i. Premises and Operations; and

- ii. Broad Form Commercial General Liability Endorsement to include blanket contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the SUBRECIPIENT); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.
- c. The SUBRECIPIENT's self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the CITY.

(3) **Proof of Insurance.** The SUBRECIPIENT shall furnish the CITY's Clerk of the Council with an insurance certificate from insurance carrier certifying that it carries such insurance and that the policy shall not be canceled nor the coverage reduced except upon thirty (30) days prior notice to the CITY.

The SUBRECIPIENT shall, prior to exercising any right under this AGREEMENT:

- a. furnish properly executed certificates of insurance and additional insured endorsement to the CITY which shall clearly evidence all coverage required above;
- b. provide that such insurance shall not be materially changed or terminated except on thirty (30) days prior written notice to the CITY;
- c. maintain such insurance for the period covered by this AGREEMENT; and
- d. replace such certificates for policies expiring prior to the expiration of this AGREEMENT.

(4) **Company Rating.** All insurance coverage shall be written with a company having an A.M. Best Rating of "A" or better and financial size of VIII or larger.

(5) **Failure to Comply.** In the event of any failure by the SUBRECIPIENT to comply with these provisions, the CITY may, after notice to the SUBRECIPIENT, suspend the program for cause until there is full compliance.

K. **Zoning.**

The SUBRECIPIENT agrees that any facility/property used in furtherance of said program shall be specifically zoned and permitted for such use(s) and activity(ies). Should the SUBRECIPIENT fail to have the required land entitlement and/or permits, thus violating any local, state, or federal rules and regulations relating thereto, the SUBRECIPIENT shall immediately make good-faith efforts to gain compliance with local, state, or federal rules and regulations following written notification of said violation(s) from the CITY or other authorized citing agency. The SUBRECIPIENT shall notify the CITY immediately of any pending violations. Failure to notify the CITY of pending violations, or to remedy such known violation(s), shall result in termination of grant funding hereunder. The SUBRECIPIENT must make all corrections required to bring the facility/property into compliance with the law within sixty (60) days of notification of the violation(s); failure to gain compliance within such time shall result in termination of grant funding hereunder.

L. **Displacement and Relocation.**

The SUBRECIPIENT must assure that it has taken all reasonable steps to minimize displacement of persons. Relocation must be consistent with requirements as set forth in 24 CFR § 576.408.

M. Provisions Required by Law Deemed Inserted.

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the AGREEMENT shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

VI. ASSURANCES AND CERTIFICATIONS

A. Non-Profit Status

The SUBRECIPIENT certifies that:

(1) The SUBRECIPIENT is a duly organized and existing non-profit corporation in good standing and authorized to do business under the laws of the State of California and in possession of required non-profit status under the United States Internal Revenue Code [for example, 26 USC § 501(c)(3)]. The SUBRECIPIENT has full right, power, and lawful authority to accept the funding hereunder and to undertake all obligations as provided herein and the execution, performance, and delivery of this AGREEMENT by the SUBRECIPIENT has been fully authorized by all requisite actions on the part of the SUBRECIPIENT.

(2) If the SUBRECIPIENT's non-profit status changes at anytime during this AGREEMENT, it will advise the CITY within 15 days.

(3) If the SUBRECIPIENT is a private non-profit, it hereby agrees that the members of its Board of Directors will receive no compensation, directly or indirectly, other than reimbursement for expenses, from any funds generated from or because of the ESG program, for their services.

(4) As a non-profit, the SUBRECIPIENT acknowledges that administration of its operation and services are subject to the requirements as established in 2 CFR 200.

B. Adherence to Federal, State, and Local Laws and Regulations

(1) General. The SUBRECIPIENT agrees to comply with all requirements of the ESG program and applicable cross-cutting Federal, State, and Local requirements.

(2) Economic Opportunities for Low- and Very Low-income Persons. The SUBRECIPIENT shall ensure that employment and other economic opportunities generated by the Program shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

(3) Civil Rights. The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of the Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 41 CFR Chapter 60.

(4) Nondiscrimination and Equal Employment Opportunity. During the performance under this AGREEMENT, the SUBRECIPIENT shall not discriminate against any employee or applicant for employment

based on race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law.

The SUBRECIPIENT shall take affirmative action to ensure that all applicants and employees are treated without regard to race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, and sexual orientation.

The SUBRECIPIENT shall comply with all provisions of Executive Order 11246, Equal Employment Opportunity, as amended by Executive Orders 11375 and 12086.

(5) Nondiscrimination and Equal Opportunity in Participation. The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). The SUBRECIPIENT shall not discriminate against any participant on the ground of race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law. The SUBRECIPIENT shall, through affirmative outreach, make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. The SUBRECIPIENT must take appropriate steps to ensure effective communication with persons with disabilities.

(6) Americans with Disabilities Act. The SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities Act which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and Local government services, and public accommodations.

(7) Fair Housing. Under section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funded sub-recipients. The SUBRECIPIENT has a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act.

C. Falsification of Information

The SUBRECIPIENT represents and warrants that it has made no false statements to the CITY in the process of obtaining this award of the ESG Funds.

D. Drug Free Workplace

The SUBRECIPIENT represents and warrants that it has established the following drug-free workplace policy:

- (1) The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace for any employee involved in a federally funded program.
- (2) As an employee working in conjunction with a federally funded program, the employees of the SUBRECIPIENT will be required to:
 - a. Abide by the terms above in statement (1), and
 - b. Notify the appropriate SUBRECIPIENT authorities and CITY officials of any criminal drug statute conviction for a violation occurring in the workplace. Such notification shall be made no later than five (5) days after conviction.
- (3) The CITY and the United States Department of Housing and Urban Development will be notified within

ten days after receiving notice of any such violation.

- (4) Within thirty (30) days of receiving such notice, appropriate personnel action will be taken against such employee, up to and including termination.
- (5) Each such employee shall be required to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or Local health, law enforcement, or other appropriate agency.

E. Religious Organization

The SUBRECIPIENT may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of said program or services. If the SUBRECIPIENT conducts such activities, the activities must be offered separately, in time or location, from said programs or services, and participation must be voluntary for the program participants.

The SUBRECIPIENT shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

If the SUBRECIPIENT is a religious organization, it retains its independence from Federal, State, and Local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities.

The SUBRECIPIENT agrees that rehabilitation of structures by the religious organization in connection with said program must be in sound accord with the provisions under 24 CFR § 576.406.

F. Additional Terms between the CITY and HUD

The SUBRECIPIENT agrees further that it shall be bound by the standard terms and conditions used in the Grant Agreement between HUD and the CITY and such other rules, regulations, or requirements as HUD may reasonably impose in addition to the aforementioned assurances at or subsequent to the execution of this AGREEMENT by the parties hereto.

G. OSHA

Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous, or dangerous to the participants' health or safety.

H. Hatch Act

The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this AGREEMENT, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C. Section 1501 et seq.

I. Davis-Bacon Act

All laborers and mechanics employed by contractors or subcontractors in the performance of construction work, including alterations and repairs, in excess of \$2,000.00, financed in whole or in part with federal funds shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. sections 276a - 276a-5. Any such construction contract shall include and comply with the required contract provisions and rules set forth in 29 C.F.R. §5.5. Further, the payroll reports (along with the "Statement of Compliance") and basic records are required to be maintained and submitted, or made available, pursuant to 29 C.F.R. §5.5(a)(3). No payment, advance, grant, loan or guarantee of funds shall be approved by the federal agency unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of 29 C.F.R. §5.5. A breach of the contract clauses in 29 C.F.R. §5.5 may be grounds for termination of the contract, and for debarment as a contractor/subcontractor, as provided in 29 C.F.R. §5.12. Labor standards interviews/investigations shall be made as necessary to assure compliance. See 29 C.F.R. §5.6(a)(3).

VII. ADMINISTRATIVE REQUIREMENTS

Generally

The following requirements and standards must be complied with: 2 CFR Part 200, et al. SUBRECIPIENT shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.318-326.

A. Procurement

(1) **Compliance.** The SUBRECIPIENT shall comply with current HUD and CITY policies concerning the procurement of equipment, goods, and services, and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. The SUBRECIPIENT shall report to the CITY all program assets (unexpended program income, property, equipment, etc.), and upon the CITY'S request, such assets shall revert to the CITY upon termination of this AGREEMENT.

(2) Pursuant to 2 CFR 200.331 (a) (4), the Indirect Cost Rate for the SUBRECIPIENT's award shall be an approved federally recognized cost rate negotiated between the SUBRECIPIENT and the Federal government, or, if no cost rate exists, the de minimis indirect cost rate as defined in 2 CFR 200.414(b) Indirect (F & A) costs shall be used. For this agreement, the de minimis indirect cost of 10% will apply.

(3) **Use and Reversion of Assets.** The use and disposition of equipment under this AGREEMENT shall be in compliance with the requirements of 2 CFR Part 200.

B. Reporting

Reporting requirements must conform to the policies and procedures as established by the CITY and 24 CFR § 576.500. The SUBRECIPIENT shall submit to the CITY, on or before the 15th day of October, January, April, and July, as part of the Quarterly Report:

- (1) **Payment Request.** An original request for reimbursement and true copies of invoices, receipts, agreements, or other documentation supporting and evidencing how the ESG Funds have been expended during the applicable quarter.

- (2) Quarterly Activities and written cumulative (year-to-date) reports of activities, program accomplishments, new program information, and up-to-date program statistics on expenditures, caseload and activities. Failure to provide any of the required documentation and reporting will cause the CITY to withhold all or a portion of a request for reimbursement until such documentation and reporting has been received and approved by the CITY.
- (3) Matching. Quarterly certification of match, plus documentation of match source.
- (4) Any other such reports as the CITY (or HUD) shall reasonably require and/or request, including but not limited to the following information: monthly records of all ethnic and racial statistics of persons and families benefited by the SUBRECIPIENT in the performance of its obligations under this AGREEMENT.

C. Record Keeping

Sufficient records must be established and maintained to enable the CITY and HUD to determine whether the ESG requirements are being met. Record keeping requirements must conform to the policies and procedures as established by the CITY. All accounting records, reports, all evidence pertaining to costs, expenses, and ESG Funds of the SUBRECIPIENT, and all documents related to this AGREEMENT shall be maintained and kept available at the SUBRECIPIENT'S office or place of business for the duration of the AGREEMENT and thereafter for five (5) years post-completion of an audit in conformity with the ESG requirements, except as hereinafter provided relating to retention of any records or documentation existing, created, or maintained in compliance with Lead-based Paint regulations, which likely require longer retention as outlined below. Records which relate to (a) complaints, claims, administrative proceedings or litigation arising out of the performance of this AGREEMENT, or (b) costs and expenses of this AGREEMENT to which the CITY or any other governmental agency takes exception, shall be retained beyond the five (5) years until complete resolution or disposition of such appeals, litigation claims, or exceptions. All said records must be retained for the greater of the aforementioned duration or the periods specified in 24 CFR 576.500(y). All records relating to, or created or maintained in compliance with, the Lead-Based Paint regulations shall be retained and maintained by the SUBRECIPIENT indefinitely, including without limitation, all inspection report(s), disclosure statement(s), and clearance report(s). Copies made by microfilming, photocopying, or similar methods may be substituted for the original records. The CITY, HUD and auditors shall have the right to access all the SUBRECIPIENT records for as long as the records are retained by the SUBRECIPIENT. In the event the SUBRECIPIENT does not make the above-referenced documents available within the City of Santa Ana, California, the SUBRECIPIENT agrees to pay all necessary and reasonable expenses incurred by the CITY in conducting any audit at the location where said records and books of account are maintained.

The SUBRECIPIENT agrees to meet the requirements set forth in 24 CFR § 576.500.

D. Homeless Management Information Systems (HMIS)

1. Generally. The SUBRECIPIENT 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 with the express knowledge and written consent of the CITY, a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS.
2. HMIS Agency Agreement. The SUBRECIPIENT shall have an agreement in place with the HMIS lead agency to participate in the regionally HMIS system. A copy of the SUBRECIPIENTS agreement with the HMIS lead agency shall be attached to this agreement as **Exhibit F**. In the case of Domestic Violence service providers

or other agencies prohibited from entering data into HMIS, documentation from the HMIS lead agency certifying that the SUBRECIPIENT is using a comparable database shall be attached to this agreement as **Exhibit E**.

3. HMIS Interagency Data Sharing Agreement. The SUBRECIPIENT shall enter into an Interagency Data Sharing Agreement with the HMIS Lead Agency where the SUBRECIPIENT agrees to share HMIS data with other ESG funded agencies regarding clients that are served in ESG funded programs, unless prohibited by law. A copy of such agreement shall be attached as **Exhibit F-1**.

E. Audit Report Requirements

The SUBRECIPIENT agrees that if the SUBRECIPIENT expends Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more in federal funds, the SUBRECIPIENT shall have an annual audit conducted by a certified public accountant in accordance with the standards as set forth and published by the United States Office of Management and Budget (2 CFR 200.501a). The SUBRECIPIENT shall provide the CITY with a copy of said audit by April 1 of the year following the program year in which this AGREEMENT is executed. Further, the SUBRECIPIENT shall comply and/or cause compliance with audit report(s) required by applicable provisions of the Lead-Based Paint Regulations as further detailed below.

VIII. EVALUATION AND MONITORING

a. Generally

The CITY will monitor the performance of the SUBRECIPIENT against goals and performance standards as required herein. The SUBRECIPIENT shall provide the CITY all necessary reporting information as required by the CITY in the administration and review of the Program. Substandard performance as determined by the CITY will constitute noncompliance with this AGREEMENT. If action to correct such substandard performance is not taken by the SUBRECIPIENT within a reasonable period of time after being notified by the CITY, contract suspension or termination procedures will be initiated.

b. Access to Records

The SUBRECIPIENT gives the CITY and HUD, including their authorized representative, access to and the right to examine all records, books, papers, items, emails, and documents, both physical and electronic, relating to the program.

c. Audit

The CITY shall have the right to audit and monitor any program income as a result of an ESG activity. Upon request by the CITY and for audit purposes, the SUBRECIPIENT further agrees to provide all files, records, and documents pertaining to related activities and clientele demographic data.

IX. LIABILITY

A. Generally

Each party to this AGREEMENT acknowledges that it will be liable for its own negligent acts or negligent omissions by or through itself, its employees, agents, and subcontractors. Each party further agrees to defend itself and themselves, and to pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this AGREEMENT shall impute or transfer any such liability from one to the other. In other words, the

SUBRECIPIENT agrees to be fully responsible for its negligent acts or omissions, or any intentional tortuous acts which result in claims or suits against the CITY, and agrees to be liable for any damages proximately caused by said acts or omissions. Nothing herein shall be construed as consent by a State or CITY agency or subdivision to be sued by third parties in any matter arising out of any contract, and nothing herein is intended to serve as a waiver of sovereign immunity where sovereign immunity applies.

B. CITY not Liable for Funds

The SUBRECIPIENT further acknowledges that the source of the ESG Funds is a federal pass-through grant to the SUBRECIPIENT. The CITY shall have no obligation to advance or pay the SUBRECIPIENT with any funds other than the ESG Funds the CITY receives from HUD.

C. Hold Harmless

The SUBRECIPIENT shall defend, indemnify and save harmless the CITY, its officers, agents, employees, representatives, volunteers, and student externs from and against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the CITY, and shall defend, indemnify and save harmless the CITY, its officers, agents, employees, representatives, volunteers, and student externs from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, workers compensation claims and attorney fees/expenses for litigation or settlement, resulting from or arising out of the negligent or wrongful acts, errors or omissions of the SUBRECIPIENT, its officers, directors, employees, agents, subcontractors, and suppliers arising out of the SUBRECIPIENT's performance of this AGREEMENT.

X. ENVIRONMENTAL CONDITIONS

A. Generally

ESG activities are subject to environmental review by HUD under the environmental regulations in 24 CFR 50. The SUBRECIPIENT, or any contractor of the SUBRECIPIENT, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property.

The SUBRECIPIENT agrees to comply with all applicable environmental requirements insofar as they apply to the performance of this AGREEMENT, including but not limited to the Clean Air Act, the Federal Water Pollution Control Act and the Flood Disaster Protection Act. If applicable, the SUBRECIPIENT also shall comply with the Historic Preservation requirements of National Historic Preservation Act of 1966.

B. Lead-based paint remediation and disclosure

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants that were built before 1978.

C. Assignment of Responsibilities

By this AGREEMENT, the SUBRECIPIENT will accept assignment from the CITY of all responsibilities set forth in Subpart K of 24 CFR 35.

D. Compliance with Subpart K

The purpose of Subpart K is to establish procedures to eliminate as far as practicable lead-based paint ("LBP") hazards in a residential property that receives Federal assistance under certain HUD programs for acquisition, leasing, support services, or operation. In connection with the grant funds under this AGREEMENT, the CITY requires that the SUBRECIPIENT comply and show evidence of compliance with all applicable subparts of 24 CFR 35, and especially, Subpart K ("LBP Regs").

The SUBRECIPIENT shall conduct the following activities for the dwelling unit, common areas servicing the dwelling unit, and the exterior surfaces of the building in which the dwelling unit is located:

- (1) A visual assessment of all painted surfaces in order to identify deteriorated paint;
- (2) Paint stabilization of each deteriorated paint surface, and clearance, in accordance with §§ 35.1330(a) and (b), before occupancy of a vacant dwelling unit or, where a unit is occupied, immediately after receipt of Federal assistance; and
- (3) Ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a), if the dwelling unit has a continuing, active financial relationship with a Federal housing assistance program, except that mortgage insurance or loan guarantees are not considered to constitute an active programmatic relationship for the purposes of this part.
- (4) And, notice to occupants in accordance with §§ 35.125(b)(1) and (c), describing the results of the clearance examination.

E. Notification of LBP Hazard

The SUBRECIPIENT shall provide to all occupants of housing:

- (1) In accordance with Section 35.130 of the LBP Regs - the LBP hazard information pamphlet. The pamphlet shall be the EPA/HUD/Consumer Product Safety Commission lead hazard information pamphlet or an EPA-approved equivalent.

The current form and version of the pamphlet can be found at:

<http://www.hud.gov/offices/lead/library/enforcement/fs-discl.pdf>

- (2) In accordance with 24 CFR 35, Subpart A, all available information and knowledge regarding the presence of LBP and LBP hazards prior to leasing a housing unit.
- (3) In accordance with 24 CFR 35, Subpart A, notification in writing of the results of the presumption of LBP and/or LBP hazards, results of any lead hazard evaluation, and any lead hazard reduction work.

F. LBP Information Summary

For purposes of information only and in no respect intended to be a representation or warranty of the provisions of the LBP Regulations, the CITY has caused to be prepared an information summary relating to the LBP Regulations and Application to dwelling units that may be occupied by recipients of services and/or funding from the SUBRECIPIENT under this AGREEMENT. CITY staff will cooperate with and be available to the SUBRECIPIENT to assist in implementation of compliance with the LBP Regs as to residential dwelling units to be assisted by the SUBRECIPIENT. The parties acknowledge and agree the CITY shall not be liable or responsible for the accuracy of such summary, and the SUBRECIPIENT is directed to the LBP Regulations and implementing guidance published and provided by HUD relating to compliance with such LBP Regulations.

G. Exemptions

Section 35.115(a) provides exemptions from Subparts B through R. For example, lead-based paint requirements do not apply to housing assistance if the assistance lasts less than one hundred (100) days.

XI. CONFLICTS OF INTEREST

The SUBRECIPIENT shall comply with 2 CFR 200.112 with respect to the use of program funds to procure services, equipment, supplies, or other property. With respect to all other decisions involving the use of program funds, the following restriction shall apply: No person who is an employee, agent, consultant, officer, or elected or appointed official of the SUBRECIPIENT and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or 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 there under, either for himself or herself, or for those with who he or she has family or business ties, during his or her tenure or for one (1) year thereafter.

The SUBRECIPIENT agrees to abide by the ESG Program's Conflict of Interest provisions as expressly detailed in 24 CFR § 576.404 regarding Organizational Conflicts of Interest and Personal Conflicts of Interest. All contractors of the SUBRECIPIENT must comply with the same requirements that apply to the SUBRECIPIENT under this section.

XII. ASSIGNABILITY

None of the duties of, or work to be performed by, the SUBRECIPIENT under this AGREEMENT shall be subcontracted or assigned to any agency, consultant, or person without the prior written consent of the CITY. The SUBRECIPIENT must submit all subcontracts and other agreements that relate to this AGREEMENT to the CITY. No subcontract or assignment shall terminate or alter the legal obligations of the SUBRECIPIENT pursuant to this AGREEMENT.

XIII. EXCLUSIVITY OF AGREEMENT

This AGREEMENT supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the use of the CITY's ESG Funds by the SUBRECIPIENT and contains all the covenants and agreements between the parties with respect to such ESG Funds in any manner whatsoever. Each party to this AGREEMENT acknowledges that no representations, inducements, promises or agreements, orally or otherwise,

have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement or amendment hereto shall be effective unless executed in writing and signed by both the CITY and the SUBRECIPIENT.

XIV. AMENDMENTS OR MODIFICATIONS

The SUBRECIPIENT shall not obligate, encumber, spend, or otherwise utilize program funds for any activity or purpose not included or not in conformance with the budget as apportioned and as submitted to the CITY unless:

- (1) The SUBRECIPIENT has received explicit written approval from the CITY to undertake such actions, or
- (2) Budget changes may be made among approved program activities and among approved budget categories so long as the specific project activity has been approved, there is no change to the total grant amount, and the changes to the budget are documented.

Any program modification request by the SUBRECIPIENT must be requested at least forty-five (45) days prior to the end of the term of this AGREEMENT. No modification to this AGREEMENT shall be binding by either party unless in writing and signed by both parties.

In the event that the CITY approves any amendment to the funding allocation, the SUBRECIPIENT shall be notified in writing and such notification shall constitute an official amendment.

The CITY may, at its discretion and upon provision of proper notice to the SUBRECIPIENT, amend this AGREEMENT to conform with changes in Federal, State, and/or the CITY laws, regulations, guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this AGREEMENT.

XV. VIOLATION OF TERMS AND CONDITIONS

A. Termination

If, due to any cause, the SUBRECIPIENT fails to comply with the terms, conditions or requirements of this AGREEMENT, or any prior AGREEMENT whereby ESG funds were received by the SUBRECIPIENT, whether stated in a Federal statute or regulation, an assurance, a State plan or application, a notice of award, or elsewhere, the CITY may terminate or suspend this AGREEMENT in accordance with 2 CFR 200.339 and in accordance with 2 CFR 200.340 by giving written notice, and the CITY may request in writing that all or some of the grant funds be returned even if the SUBRECIPIENT has expended the funds.

If the SUBRECIPIENT reports inaccurately, or if on audit there is a disallowance of certain expenditures, the SUBRECIPIENT agrees to remedy the acts or omissions causing the disallowance and repay the CITY all amounts spent in violation thereof. If the SUBRECIPIENT engaged in fraudulent activity to obtain and/or justify expenditure of the ESG funds granted hereunder, the SUBRECIPIENT shall be required to reimburse the CITY of all such funds that were obtained and/or spent under fraudulent circumstances, and the CITY reserves the right to take other remedies that may be legally available.

The SUBRECIPIENT agrees to return all funds as requested by the CITY under this section within thirty (30) days of receipt of the written request.

Any objections regarding terminations or suspensions shall be made by the SUBRECIPIENT in writing and mailed to the CITY pursuant to the above NOTICES section.

XVI. CLOSE-OUT

The SUBRECIPIENT agrees to comply with the closeout procedures detailed in 2 CFR 200.343, including the following:

- (1) SUBRECIPIENT must submit, no later than ninety (90) calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award;
- (2) Unless the CITY authorizes an extension, SUBRECIPIENT must liquidate all obligations incurred under the Federal award not later than ninety (90) calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award;
- (3) SUBRECIPIENT must promptly refund any balances of unobligated cash that the CITY paid in advance or paid and that is not authorized to be retained by SUBRECIPIENT for use in other projects (See OMG Circular A-129 and 2 CFR 200.345);
- (4) SUBRECIPIENT must account for any real and personal property acquired with Federal funds or received from the Federal government in accordance with 2 CFR 200.310-200.316 and 200.329; and,
- (5) The CITY should complete all closeout actions for the Federal award no later than one year after receipt and acceptance of all required final reports.

XVII. VALIDITY AND SEVERABILITY

The invalidity in whole or in part of any provision of this AGREEMENT shall not void or affect the validity of any other provision of this AGREEMENT. Whenever possible, each provision of this AGREEMENT shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this AGREEMENT.

XVIII. LAWS GOVERNING THIS AGREEMENT

This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, and all applicable federal laws and regulations.

XIX. WAIVER

No delay or omission by the CITY hereto to exercise any right or power accruing upon any noncompliance or default by the SUBRECIPIENT with respect to any of the terms of this AGREEMENT shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

XX. AGREEMENT DOCUMENT, EXHIBITS, AND ATTACHMENTS

All of the attachments and exhibits attached to this AGREEMENT are deemed incorporated by reference. This document may be executed in three (3) counterparts, each of which shall be deemed to be an original.

Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this AGREEMENT, and shall indemnify the CITY fully, including reasonable costs and attorney's fees, for any injuries or damages to the CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the date and year first above written.

ATTEST:

CITY OF SANTA ANA
a municipal corporation

DAISY GOMEZ
Clerk of the Council

KRISTINE RIDGE
City Manager

APPROVED AS TO FORM:

SONIA CARVALHO
City Attorney

SUBRECIPIENT:

By: RYAN O. HODGE
Assistant City Attorney

Name: David Valentin
Title: Chief of Police
Tax ID: 95-6000785
DUNS #:0831532470000

RECOMMENDED FOR APPROVAL:

STEVEN A. MENDOZA
Executive Director
Community Development Agency

**EMERGENCY SOLUTIONS GRANT
SUBRECIPIENT AGREEMENT BETWEEN
THE CITY OF SANTA ANA
AND
MERCY HOUSE LIVING CENTERS, INC.
(24 CFR Parts 91 and 576)**

THIS GRANT AGREEMENT, is hereby made and entered into this July 1, 2020, by and between the City of Santa Ana, a charter city and municipal corporation of the State of California, herein called the "CITY", and Mercy House Living Centers, Inc., a California nonprofit organization, herein called the "SUBRECIPIENT".

RECITALS:

1. The CITY is the recipient of Emergency Solutions Grant ("ESG") funds from the United States Department of Housing and Urban Development ("HUD"), pursuant to subtitle B of title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11371–11378], for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, and for homelessness prevention and rapid re-housing assistance. Catalogue of Federal Domestic Assistance ("CFDA") 14.231 and Federal Award Identification Number (FAIN) E-20-MC-06-0508.

2. The CITY has approved the provision of federal funds under the ESG to be used in the operation of an emergency solutions program ("program") for the homeless or at-risk of homelessness of the City of Santa Ana as further described by **Exhibit A**, Scope of Work, attached hereto and by this reference incorporated herein.

3. The SUBRECIPIENT represents that it has the requisite qualifications, expertise, and experience in the provision of emergency solutions programs for the homeless or at-risk of homelessness and is willing to use said federal funds to operate said program.

4. The SUBRECIPIENT agrees to assist individuals and families that are homeless or at risk of homelessness in obtaining appropriate supportive services including, but not limited to: temporary and permanent housing, relocation and stabilization services, rapid re-housing assistance, medical and mental health treatment, counseling supervision, and other services essential for achieving independent living.

5. The SUBRECIPIENT has agreed to be reimbursed for the above services in an amount not to exceed \$276,468 in grant funding for Emergency Shelter - Operations, Rapid Re-Housing and Homeless Prevention.

6. The CITY previously entered into an Agreement with Mercy Housing Living Centers to Operate an Interim Emergency Homeless Shelter, Agreement No. A-2018-221, as amended, dated September 18, 2018, by which the City committed a set amount of funds to SUBRECIPIENT for the operation of The Link Interim Emergency Homeless Shelter. As part of this ESG AGREEMENT, the CITY is committing up to \$151,468 to SUBRECIPIENT for Emergency Shelter Operations at The Link. This \$151,468 shall count toward the amount of funds due from the CITY to SUBRECIPIENT under Agreement No. 2018-221, as amended.

7. This AGREEMENT is contingent upon the award of Emergency Solutions Grant funds from the United States Department of Housing and Urban Development.

8. The CITY and the SUBRECIPIENT have duly executed this AGREEMENT for the expenditure and utilization of said funds.

NOW THEREFORE, it is agreed by and between the parties that the foregoing Recitals are a substantive part of this AGREEMENT and the following terms and conditions are approved and together with all exhibits and attachments hereto, shall constitute the entire AGREEMENT between the CITY and the SUBRECIPIENT:

I. SCOPE OF PROGRAM

A. General Administration

The SUBRECIPIENT agrees to implement this activity as set forth in detail in **Exhibit A**, Scope of Work, which shall provide a description of each activity, including the services to be performed, the person or entity providing the service, the estimated number of recipients of the service, and the manner and means of the services.

B. Levels of Accomplishment – Goals and Performance Measures

The SUBRECIPIENT shall be responsible to accomplish the levels of performance as set forth in **Exhibit A** and report such measures quarterly to the CITY. If the SUBRECIPIENT estimates such goals will not be met, the SUBRECIPIENT is to contact the CITY, at which time the CITY will determine if any adjustments to the grant award is appropriate.

C. Staffing

The SUBRECIPIENT shall ensure adequate and appropriate staffing is allocated to each ESG activity. Nothing contained in this AGREEMENT is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties.

II. TERM OF AGREEMENT

This AGREEMENT shall take effect on July 1, 2020, and shall terminate on June 30, 2021, unless otherwise cancelled or modified according to the terms of this AGREEMENT.

III. DISBURSEMENT AND FUNDS

The City was allocated \$500,947 in Emergency Solutions Grant funds under the McKinney-Vento Homeless Assistance Act for fiscal year 2020-2021 from the Department of Housing and Urban Development. CITY agrees to pay to SUBRECIPIENT when, if and to the extent federal funds are received under provisions of the Act a sum not to exceed \$276,468 for SUBRECIPIENT'S performance in accordance with the Budget attached hereto as "Exhibit B" during the period of this Agreement. Said sum shall be paid after CITY receives invoices submitted by SUBRECIPIENT as provided hereinabove.

Pursuant to said Budget, SUBRECIPIENT shall receive up to \$151,468 in ESG funds for Emergency Shelter – Operations at The Link. The amount of funds, up to \$151,468, reimbursed to SUBRECIPIENT for Emergency Shelter – Operations at The Link pursuant to this AGREEMENT, shall apply toward the funds that the CITY owes to SUBRECIPIENT for operation of The Link pursuant to Agreement No. A-2018-221, as amended.

A. Amount and Expenditure End Date

The CITY agrees to reimburse the SUBRECIPIENT a maximum amount not to exceed \$276,468 from Emergency Solutions Grant (ESG) funds, as outlined in **Exhibit B**, Final Budget, and such funds shall be expended by the SUBRECIPIENT on or before June 30, 2021. SUBRECIPIENT has the ability to adjust line item amounts in the Budget with the written approval of the CITY's Executive Director of the Community Development Agency, so long as the total Budget amount does not increase.

B. Invoicing Procedures

The SUBRECIPIENT shall submit quarterly invoices (on or before the 15th day of October, January, April, and July) in a form prescribed by the CITY, detailing such expenses. Such schedule may be modified with the approval of the CITY.

C. Payment

Payment is subject to the receipt and approval of such invoices and quarterly activity reports, as hereinafter more fully set forth below under Reporting, with the final payment subject to the satisfaction of the condition precedent of submittal of complete invoicing and reporting information due on or before July 15 of the applicable funding year. The CITY shall pay such invoices within thirty (30) days after receipt thereof, provided the CITY is satisfied that such expenses have been incurred within the scope of this AGREEMENT and that the SUBRECIPIENT is in compliance with the terms and conditions of this AGREEMENT. The thirty (30) day period will discontinue if the reimbursement request is determined to be incomplete and will restart the thirty-day timeline once the remaining required elements have been submitted.

Failure to provide any of the required documentation and reporting will cause the CITY to withhold all or a portion of a request for reimbursement until such documentation and reporting has been received and approved by the CITY.

D. Use of Funds

The SUBRECIPIENT agrees to use said funds pursuant to this AGREEMENT to pay for necessary and reasonable costs allowable under federal law and regulations to operate said program only. Said amounts shall include and will be limited to, street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, housing relocation and stabilization services, short-term and medium-term rental assistance, and Homeless Management Information Systems ("HMIS") data contribution as set forth in 24 CFR § 576.101 – § 576.107. Allowable program costs are detailed in the Budget, as set forth in **Exhibit B**, attached hereto and by this reference incorporated herein. The SUBRECIPIENT'S failure to perform as required may, in addition to other remedies set forth in this AGREEMENT, result in readjustment of the amount of funds the CITY is otherwise obligated to pay to the SUBRECIPIENT pursuant to the terms hereof. The SUBRECIPIENT agrees that the homeless shelter/services under said program shall be available for the entire period during which said funds are provided.

E. Condition of Funding

(1) The CITY advises the SUBRECIPIENT that a significant change in entitlement funding may result in a change in the current process utilized by the CITY to determine funding allocations. The SUBRECIPIENT acknowledges that the obligation of the CITY is contingent upon the availability of Federal, State or Local

government funds, which are appropriated or allocated for the payment of such an obligation. If funding levels are significantly affected by Federal budgeting or if funds are not allocated and available for the continuance of the function performed by the SUBRECIPIENT, this AGREEMENT may be terminated by the CITY at the end of the period for which funds are available. At the earliest opportunity, the CITY shall notify the SUBRECIPIENT of any service which may be affected by a shortage of funds. No penalty shall accrue to the CITY in the event this provision is exercised and the CITY shall not be liable for any damages as a result of termination under this provision of this AGREEMENT. Nothing herein shall be construed as obligating the CITY to expend funds in excess of appropriations authorized by law.

(2) The SUBRECIPIENT shall allow representatives of the CITY or HUD to inspect facilities which are used in connection with the AGREEMENT or which implement programs funded under this AGREEMENT.

F. Matching

The SUBRECIPIENT is required to make matching contributions to supplement the ESG program in an amount that equals or exceeds the amount of ESG funds provided by HUD through the CITY. Such contributions shall be entirely consistent with the Matching Requirements as outlined by 24 CFR § 576.201. The anticipated source and amount of all matching funds contributed by the SUBRECIPIENT will be enumerated in **Exhibit B**, Final Budget.

G. Program Income

(1) Definition. Program income means, as provided by 2 CFR 200.80, gross income received by the SUBRECIPIENT directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. For purposes of ESG, program income will also include any amount of a security or utility deposit returned to the SUBRECIPIENT.

(2) Use. The SUBRECIPIENT shall use all income received from said funds only for the same purposes for which said funds may be expended pursuant to the terms and conditions of this AGREEMENT.

(3) Counts toward Matching. Costs paid by program income may count toward meeting the matching requirements, provided the costs are eligible ESG costs that supplement the program.

H. Separation of Accounts

All funds received by the SUBRECIPIENT from the CITY pursuant to this AGREEMENT shall be maintained separate and apart from any other funds of the SUBRECIPIENT, or of any principal or member of the SUBRECIPIENT, in an account (the "Account") at a federally insured banking or savings and loan institution with record keeping of such Accounts maintained pursuant to applicable legal requirements. The SUBRECIPIENT shall keep all records of the Account in a manner that is consistent with generally accepted accounting principles. No monies shall be withdrawn from the Account except for expenditures relating to essential services, homeless prevention, and/or operations costs, as authorized hereunder. All disbursements from the Account shall be for obligations incurred in the performance of this AGREEMENT and shall be supported by contracts, invoices, vouchers, and other data, as appropriate, evidencing the necessity of such expenditure. The CITY may withhold payment allocation requests if the SUBRECIPIENT fails to comply with the above requirements until such compliance is demonstrated.

I. Expenditure of Funds

Much like how HUD requires the CITY, pursuant to 24 CFR 576.203, to expend all of the grant funds for eligible activity costs within 24 months after the date that HUD signs the grant agreement with the CITY, it is a requirement for the SUBRECIPIENT to expend all of the grant funds for eligible activity costs within the

aforementioned period. For the purposes of this paragraph, expenditure means either an actual cash disbursement for a direct charge for a good/service or an indirect cost, or the accrual of a direct charge for a good/service or an indirect cost. Failure to expend said funds within said timeframe can result in a reallocation of funds.

J. Prohibited Use

(1) Generally. The SUBRECIPIENT hereby certifies and agrees that it will not use funds provided through this AGREEMENT to pay for meals for persons other than those identified as homeless or at risk of homelessness. Said funds shall not be used for entertainment purposes or for gifts. The SUBRECIPIENT certifies that it will not use said funds for illegal or dishonest conduct, rather, fund use will remain in compliance with all applicable federal, state, and local laws, including applicable laws not outlined in this AGREEMENT.

(2) Lobbying. The SUBRECIPIENT certifies and agrees that it will comply with federal law (31 U.S.C. 1352) and regulations found at 24 CFR Part 87, which provide that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, or an officer or employee of a Member of Congress in connection with awarding of any federal contract, the making of any federal grant or loan, entering into any cooperative agreement and the extension, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The SUBRECIPIENT shall sign a certification to that effect in a form as set forth in **Exhibit C**, attached hereto and by this reference incorporated herein. The SUBRECIPIENT shall submit said signed certification to the CITY prior to performing any of its obligations under this AGREEMENT and prior to any obligation arising on the part of the CITY to pay any sums to the SUBRECIPIENT under the terms and conditions of this AGREEMENT. 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, the undersigned shall complete and submit a "Disclosure Form to Report Lobbying," in accordance with its instructions (see **Exhibit D**).

IV. NOTICES

The SUBRECIPIENT and the CITY agree that all notices required by this AGREEMENT shall be made in writing and delivered via mail (postage prepaid); commercial courier; personal delivery; or sent by facsimile or other electronic means (provided that receipt is confirmed). Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this AGREEMENT shall be addressed to the individuals in the capacities indicated below, unless modified by subsequent written notice.

Communication and details concerning the AGREEMENT shall be delivered to the office of, and directed to, the following representatives:

CITY:

Terri Eggers
Homeless Services Manager
City of Santa Ana
Community Development Agency (M-25)
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702-1988
(714) 647-5378,
teggers@santa-ana.org

SUBRECIPIENT:

Larry Haynes
Executive Director

Mercy House Living Centers, Inc.
P.O. Box 1905
Santa Ana, CA 92701
714-836-7188

V. GENERAL CONDITIONS

A. Coordination with Continuum of Care

The SUBRECIPIENT must work with the Continuum of Care (“CoC”) to ensure the screening, assessment, and referral of program participants are consistent with the CITY’s written standards for providing ESG assistance as described in its consolidated plan. The SUBRECIPIENT must keep documentation evidencing the use of, and written intake procedures for, the centralized or coordinated assessment system(s) developed by the CoC in accordance with the requirements established by HUD. See 24 CFR 576.400.

B. Evaluation of Program Participants Eligibility and Needs

The SUBRECIPIENT must conduct evaluations and re-evaluations to determine the eligibility of each individual or family’s eligibility for ESG assistance in accordance with 24 CFR 576.401.

C. Terminating Assistance

If a program participant violates program requirements, the SUBRECIPIENT may terminate the assistance in accordance with a formal process established by the SUBRECIPIENT that recognizes the rights of individuals affected. See 24 CFR 576.402

D. Shelter and Housing Standards

The SUBRECIPIENT certifies that shelters and housing supported by ESG funds and used by ESG beneficiaries will conform to 24 CFR 576.403.

E. Homeless Involvement

The SUBRECIPIENT certifies that it will involve, to the maximum extent practicable, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities. See 24 CFR 576.405(c) and 42 USC 11375(d).

F. Independent Contractor

Nothing contained in this AGREEMENT is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The SUBRECIPIENT and its subcontractors shall at all times remain independent contractors with respect to the services to be performed under this AGREEMENT. The CITY shall be exempt from payment of any Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the SUBRECIPIENT is an independent contractor.

G. Subcontracts

- (1) Content Requirements. The SUBRECIPIENT will include all relevant provisions of this AGREEMENT in all subcontracts entered into as part of the activities undertaken in furtherance of this AGREEMENT and will take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of regulations issued by any federal agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 (Economic Opportunities for Low- and Very Low-Income Persons) and will not allow any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- (2) Submission to the CITY. The SUBRECIPIENT must submit all subcontracts and other agreements that relate to this AGREEMENT to the CITY.

H. Licensing

The SUBRECIPIENT agrees to obtain and maintain all required licenses, registrations, accreditation, and inspections from all agencies governing its operations. The SUBRECIPIENT shall ensure that its staff and subcontractors shall also obtain and maintain all required licenses, registrations, accreditation and inspections from all agencies governing the SUBRECIPIENT's operations hereunder. Such licensing requirements include obtaining a City business license, as applicable.

I. Responsibilities Toward Employees

The SUBRECIPIENT accepts full responsibility for payment of any and all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholdings, social security withholdings, and any and all other taxes or payroll withholdings required for all employees engaged in the performance of the work and activities authorized by the AGREEMENT. The SUBRECIPIENT accepts full responsibility for providing workers with proper safety equipment and taking any and all necessary precautions to guarantee the safety of workers or persons otherwise affected.

J. Insurance and Bonding

(1) Generally. The SUBRECIPIENT shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, or damage to property (including property of Grantee) caused by the negligent acts or omissions, or negligent conduct of the SUBRECIPIENT, its employees, agents or subcontractors, to the extent permitted by law, in connection with the activities pursuant to this AGREEMENT.

The SUBRECIPIENT shall comply with the bonding and insurance requirements of 2 CFR 200.427, and 2 CFR 200.447.

The SUBRECIPIENT shall undertake self-insurance, or shall obtain, at its sole cost, a policy or policies of commercial general liability insurance, or equivalent form.

Such insurance shall: (1) name the City of Santa Ana, its officers, agents, employees and volunteers as additional insureds; (2) be primary with respect to insurance or self-insurance programs maintained by the CITY; (3) contain standard separation of insureds provisions; and (4) give to the CITY prompt and timely notice of claim made or suit instituted arising out of the SUBRECIPIENT's operations hereunder.

(2) Limits. The SUBRECIPIENT shall maintain, at all times, the following minimum levels of Insurance, and shall, without in any way altering its liability, obtain, pay for, and maintain insurance for the coverages and amounts of coverage not less than those set forth below:

- a. Workers' Compensation. Amount must comply with State and Federal Laws
- b. Comprehensive General Liability. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage resulting from any one occurrence, including the following coverages:
 - i. Premises and Operations; and
 - ii. Broad Form Commercial General Liability Endorsement to include blanket contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the SUBRECIPIENT); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.
- c. The SUBRECIPIENT's self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the CITY.

(3) Proof of Insurance. The SUBRECIPIENT shall furnish the CITY's Clerk of the Council with an insurance certificate from insurance carrier certifying that it carries such insurance and that the policy shall not be canceled nor the coverage reduced except upon thirty (30) days prior notice to the CITY.

The SUBRECIPIENT shall, prior to exercising any right under this AGREEMENT:

- a. furnish properly executed certificates of insurance and additional insured endorsement to the CITY which shall clearly evidence all coverage required above;
- b. provide that such insurance shall not be materially changed or terminated except on thirty (30) days prior written notice to the CITY;
- c. maintain such insurance for the period covered by this AGREEMENT; and
- d. replace such certificates for policies expiring prior to the expiration of this AGREEMENT.

(4) Company Rating. All insurance coverage shall be written with a company having an A.M. Best Rating of "A" or better and financial size of VIII or larger.

(5) Failure to Comply. In the event of any failure by the SUBRECIPIENT to comply with these provisions, the CITY may, after notice to the SUBRECIPIENT, suspend the program for cause until there is full compliance.

K. Zoning.

The SUBRECIPIENT agrees that any facility/property used in furtherance of said program shall be specifically zoned and permitted for such use(s) and activity(ies). Should the SUBRECIPIENT fail to have the required land entitlement and/or permits, thus violating any local, state, or federal rules and regulations relating thereto, the SUBRECIPIENT shall immediately make good-faith efforts to gain compliance with local, state, or federal rules and regulations following written notification of said violation(s) from the CITY or other authorized citing agency. The SUBRECIPIENT shall notify the CITY immediately of any pending violations. Failure to notify the CITY of pending violations, or to remedy such known violation(s), shall result in termination of grant funding hereunder. The SUBRECIPIENT must make all corrections required to bring the facility/property into compliance with the law within sixty (60) days of notification of the violation(s); failure to gain compliance within such time shall result in termination of grant funding hereunder.

L. Displacement and Relocation.

The SUBRECIPIENT must assure that it has taken all reasonable steps to minimize displacement of persons. Relocation must be consistent with requirements as set forth in 24 CFR § 576.408.

M. Provisions Required by Law Deemed Inserted.

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the AGREEMENT shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

VI. **ASSURANCES AND CERTIFICATIONS**A. Non-Profit Status

The SUBRECIPIENT certifies that:

(1) The SUBRECIPIENT is a duly organized and existing non-profit corporation in good standing and authorized to do business under the laws of the State of California and in possession of required non-profit status under the United States Internal Revenue Code [for example, 26 USC § 501(c)(3)]. The SUBRECIPIENT has full right, power, and lawful authority to accept the funding hereunder and to undertake all obligations as provided herein and the execution, performance, and delivery of this AGREEMENT by the SUBRECIPIENT has been fully authorized by all requisite actions on the part of the SUBRECIPIENT.

(2) If the SUBRECIPIENT's non-profit status changes at anytime during this AGREEMENT, it will advise the CITY within 15 days.

(3) If the SUBRECIPIENT is a private non-profit, it hereby agrees that the members of its Board of Directors will receive no compensation, directly or indirectly, other than reimbursement for expenses, from any funds generated from or because of the ESG program, for their services.

(4) As a non-profit, the SUBRECIPIENT acknowledges that administration of its operation and services are subject to the requirements as established in 2 CFR 200.

B. Adherence to Federal, State, and Local Laws and Regulations

(1) General. The SUBRECIPIENT agrees to comply with all requirements of the ESG program and applicable cross-cutting Federal, State, and Local requirements.

(2) Economic Opportunities for Low- and Very Low-income Persons. The SUBRECIPIENT shall ensure that employment and other economic opportunities generated by the Program shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

(3) Civil Rights. The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of the Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 41 CFR Chapter 60.

(4) Nondiscrimination and Equal Employment Opportunity. During the performance under this AGREEMENT, the SUBRECIPIENT shall not discriminate against any employee or applicant for employment based on race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law.

The SUBRECIPIENT shall take affirmative action to ensure that all applicants and employees are treated without regard to race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, and sexual orientation.

The SUBRECIPIENT shall comply with all provisions of Executive Order 11246, Equal Employment Opportunity, as amended by Executive Orders 11375 and 12086.

(5) Nondiscrimination and Equal Opportunity in Participation. The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). The SUBRECIPIENT shall not discriminate against any participant on the ground of race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familiar status, sexual orientation, or any other basis prohibited by applicable law. The SUBRECIPIENT shall, through affirmative outreach, make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. The SUBRECIPIENT must take appropriate steps to ensure effective communication with persons with disabilities.

(6) Americans with Disabilities Act. The SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities Act which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and Local government services, and public accommodations.

(7) Fair Housing. Under section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funded sub-recipients. The SUBRECIPIENT has a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act.

C. Falsification of Information

The SUBRECIPIENT represents and warrants that it has made no false statements to the CITY in the process of obtaining this award of the ESG Funds.

D. Drug Free Workplace

The SUBRECIPIENT represents and warrants that it has established the following drug-free workplace policy:

- (1) The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace for any employee involved in a federally funded program.
- (2) As an employee working in conjunction with a federally funded program, the employees of the SUBRECIPIENT will be required to:
 - a. Abide by the terms above in statement (1), and
 - b. Notify the appropriate SUBRECIPIENT authorities and CITY officials of any criminal drug statute conviction for a violation occurring in the workplace. Such notification shall be made no later than five (5) days after conviction.
- (3) The CITY and the United States Department of Housing and Urban Development will be notified within ten days after receiving notice of any such violation.
- (4) Within thirty (30) days of receiving such notice, appropriate personnel action will be taken against such employee, up to and including termination.
- (5) Each such employee shall be required to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or Local health, law enforcement, or other appropriate agency.

E. Religious Organization

The SUBRECIPIENT may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of said program or services. If the SUBRECIPIENT conducts such activities, the activities must be offered separately, in time or location, from said programs or services, and participation must be voluntary for the program participants.

The SUBRECIPIENT shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

If the SUBRECIPIENT is a religious organization, it retains its independence from Federal, State, and Local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities.

The SUBRECIPIENT agrees that rehabilitation of structures by the religious organization in connection with said program must be in sound accord with the provisions under 24 CFR § 576.406.

F. Additional Terms between the CITY and HUD

The SUBRECIPIENT agrees further that it shall be bound by the standard terms and conditions used in the Grant Agreement between HUD and the CITY and such other rules, regulations, or requirements as HUD may reasonably impose in addition to the aforementioned assurances at or subsequent to the execution of this AGREEMENT by the parties hereto.

G. OSHA

Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous, or dangerous to the participants' health or safety.

H. Hatch Act

The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this AGREEMENT, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C. Section 1501 et seq.

I. Davis-Bacon Act

All laborers and mechanics employed by contractors or subcontractors in the performance of construction work, including alterations and repairs, in excess of \$2,000.00, financed in whole or in part with federal funds shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. sections 276a - 276a-5. Any such construction contract shall include and comply with the required contract provisions and rules set forth in 29 C.F.R. §5.5. Further, the payroll reports (along with the "Statement of Compliance") and basic records are required to be maintained and submitted, or made available, pursuant to 29 C.F.R. §5.5(a)(3). No payment, advance, grant, loan or guarantee of funds shall be approved by the federal agency unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of 29 C.F.R. §5.5. A breach of the contract clauses in 29 C.F.R. §5.5 may be grounds for termination of the contract, and for debarment as a contractor/subcontractor, as provided in 29 C.F.R. §5.12. Labor standards interviews/investigations shall be made as necessary to assure compliance. See 29 C.F.R. §5.6(a)(3).

VII. ADMINISTRATIVE REQUIREMENTS

A. Generally

The following requirements and standards must be complied with: 2 CFR Part 200, et al. SUBRECIPIENT shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.318-326.

B. Procurement

(1) Compliance. The SUBRECIPIENT shall comply with current HUD and CITY policies concerning the procurement of equipment, goods, and services, and shall maintain inventory records of all non-expendable

personal property as defined by such policy as may be procured with funds provided herein. The SUBRECIPIENT shall report to the CITY all program assets (unexpended program income, property, equipment, etc.), and upon the CITY'S request, such assets shall revert to the CITY upon termination of this AGREEMENT.

(2) Pursuant to 2 CFR 200.331 (a) (4), the Indirect Cost Rate for the SUBRECIPIENT's award shall be an approved federally recognized cost rate negotiated between the SUBRECIPIENT and the Federal government, or, if no cost rate exists, the de minimis indirect cost rate as defined in 2 CFR 200.414(b) Indirect (F & A) costs shall be used. For this agreement, the de minimis indirect cost of 10% will apply.

(3) Use and Reversion of Assets. The use and disposition of equipment under this AGREEMENT shall be in compliance with the requirements of 2 CFR Part 200.

C. Reporting

Reporting requirements must conform to the policies and procedures as established by the CITY and 24 CFR § 576.500. The SUBRECIPIENT shall submit to the CITY, on or before the 15th day of October, January, April, and July, as part of the Quarterly Report:

- (1) Payment Request. An original request for reimbursement and true copies of invoices, receipts, agreements, or other documentation supporting and evidencing how the ESG Funds have been expended during the applicable quarter.
- (2) Quarterly Activities and written cumulative (year-to-date) reports of activities, program accomplishments, new program information, and up-to-date program statistics on expenditures, caseload and activities. Failure to provide any of the required documentation and reporting will cause the CITY to withhold all or a portion of a request for reimbursement until such documentation and reporting has been received and approved by the CITY.
- (3) Matching. Quarterly certification of match, plus documentation of match source.
- (4) Any other such reports as the CITY (or HUD) shall reasonably require and/or request, including but not limited to the following information: monthly records of all ethnic and racial statistics of persons and families benefited by the SUBRECIPIENT in the performance of its obligations under this AGREEMENT.

D. Record Keeping

Sufficient records must be established and maintained to enable the CITY and HUD to determine whether the ESG requirements are being met. Record keeping requirements must conform to the policies and procedures as established by the CITY. All accounting records, reports, all evidence pertaining to costs, expenses, and ESG Funds of the SUBRECIPIENT, and all documents related to this AGREEMENT shall be maintained and kept available at the SUBRECIPIENT'S office or place of business for the duration of the AGREEMENT and thereafter for five (5) years post-completion of an audit in conformity with the ESG requirements, except as hereinafter provided relating to retention of any records or documentation existing, created, or maintained in compliance with Lead-based Paint regulations, which likely require longer retention as outlined below. Records which relate to (a) complaints, claims, administrative proceedings or litigation arising out of the performance of this AGREEMENT, or (b) costs and expenses of this AGREEMENT to which the CITY or any other governmental agency takes exception, shall be retained beyond the five (5) years until complete resolution or

disposition of such appeals, litigation claims, or exceptions. All said records must be retained for the greater of the aforementioned duration or the periods specified in 24 CFR 576.500(y). All records relating to, or created or maintained in compliance with, the Lead-Based Paint regulations shall be retained and maintained by the SUBRECIPIENT indefinitely, including without limitation, all inspection report(s), disclosure statement(s), and clearance report(s). Copies made by microfilming, photocopying, or similar methods may be substituted for the original records. The CITY, HUD and auditors shall have the right to access all the SUBRECIPIENT records for as long as the records are retained by the SUBRECIPIENT. In the event the SUBRECIPIENT does not make the above-referenced documents available within the City of Santa Ana, California, the SUBRECIPIENT agrees to pay all necessary and reasonable expenses incurred by the CITY in conducting any audit at the location where said records and books of account are maintained.

The SUBRECIPIENT agrees to meet the requirements set forth in 24 CFR § 576.500.

E. Homeless Management Information Systems (HMIS)

(1) Generally. The SUBRECIPIENT 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 with the express knowledge and written consent of the CITY, a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS.

(2) HMIS Agency Agreement. The SUBRECIPIENT shall have an agreement in place with the HMIS lead agency to participate in the regionally HMIS system. A copy of the SUBRECIPIENTS agreement with the HMIS lead agency shall be attached to this agreement as **Exhibit F**. In the case of Domestic Violence service providers or other agencies prohibited from entering data into HMIS, documentation from the HMIS lead agency certifying that the SUBRECIPIENT is using a comparable database shall be attached to this agreement as **Exhibit E**.

(3) HMIS Interagency Data Sharing Agreement. The SUBRECIPIENT shall enter into an Interagency Data Sharing Agreement with the HMIS Lead Agency where the SUBRECIPIENT agrees to share HMIS data with other ESG funded agencies regarding clients that are served in ESG funded programs, unless prohibited by law. A copy of such agreement shall be attached as **Exhibit F-1**.

(A.) The SUBRECIPIENT agrees to provide 211OC with all required data needed to complete data analysis regarding project performance, data timeliness, or data quality.

F. Audit Report Requirements

The SUBRECIPIENT agrees that if the SUBRECIPIENT expends Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more in federal funds, the SUBRECIPIENT shall have an annual audit conducted by a certified public accountant in accordance with the standards as set forth and published by the United States Office of Management and Budget (2 CFR 200.501a). The SUBRECIPIENT shall provide the CITY with a copy of said audit by April 1 of the year following the program year in which this AGREEMENT is executed. Further, the SUBRECIPIENT shall comply and/or cause compliance with audit report(s) required by applicable provisions of the Lead-Based Paint Regulations as further detailed below.

VIII. EVALUATION AND MONITORING

A. Generally

The CITY will monitor the performance of the SUBRECIPIENT against goals and performance standards as required herein. The SUBRECIPIENT shall provide the CITY all necessary reporting information as required by the CITY in the administration and review of the Program. Substandard performance as determined by the CITY will constitute noncompliance with this AGREEMENT. If action to correct such substandard performance is not taken by the SUBRECIPIENT within a reasonable period of time after being notified by the CITY, contract suspension or termination procedures will be initiated.

B. Access to Records

The SUBRECIPIENT gives the CITY and HUD, including their authorized representative, access to and the right to examine all records, books, papers, items, emails, and documents, both physical and electronic, relating to the program.

C. Audit

The CITY shall have the right to audit and monitor any program income as a result of an ESG activity. Upon request by the CITY and for audit purposes, the SUBRECIPIENT further agrees to provide all files, records, and documents pertaining to related activities and clientele demographic data.

IX. LIABILITY

A. Generally

Each party to this AGREEMENT acknowledges that it will be liable for its own negligent acts or negligent omissions by or through itself, its employees, agents, and subcontractors. Each party further agrees to defend itself and themselves, and to pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this AGREEMENT shall impute or transfer any such liability from one to the other. In other words, the SUBRECIPIENT agrees to be fully responsible for its negligent acts or omissions, or any intentional tortuous acts which result in claims or suits against the CITY, and agrees to be liable for any damages proximately caused by said acts or omissions. Nothing herein shall be construed as consent by a State or CITY agency or subdivision to be sued by third parties in any matter arising out of any contract, and nothing herein is intended to serve as a waiver of sovereign immunity where sovereign immunity applies.

B. CITY not Liable for Funds

The SUBRECIPIENT further acknowledges that the source of the ESG Funds is a federal pass-through grant to the SUBRECIPIENT. The CITY shall have no obligation to advance or pay the SUBRECIPIENT with any funds other than the ESG Funds the CITY receives from HUD.

C. Hold Harmless

The SUBRECIPIENT shall defend, indemnify and save harmless the CITY, its officers, agents, employees, representatives, volunteers, and student externs from and against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the CITY, and shall defend, indemnify and save harmless the CITY, its officers, agents, employees, representatives, volunteers, and student externs from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, workers compensation claims and attorney fees/expenses for litigation or settlement, resulting from or arising out of the negligent or wrongful acts, errors or omissions of the SUBRECIPIENT, its officers, directors, employees, agents, subcontractors, and suppliers arising out of the

SUBRECIPIENT's performance of this AGREEMENT.

X. ENVIRONMENTAL CONDITIONS

A. Generally

ESG activities are subject to environmental review by HUD under the environmental regulations in 24 CFR 50. The SUBRECIPIENT, or any contractor of the SUBRECIPIENT, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property.

The SUBRECIPIENT agrees to comply with all applicable environmental requirements insofar as they apply to the performance of this AGREEMENT, including but not limited to the Clean Air Act, the Federal Water Pollution Control Act and the Flood Disaster Protection Act. If applicable, the SUBRECIPIENT also shall comply with the Historic Preservation requirements of National Historic Preservation Act of 1966.

B. Lead-based paint remediation and disclosure

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants that were built before 1978.

C. Assignment of Responsibilities

By this AGREEMENT, the SUBRECIPIENT will accept assignment from the CITY of all responsibilities set forth in Subpart K of 24 CFR 35.

D. Compliance with Subpart K

The purpose of Subpart K is to establish procedures to eliminate as far as practicable lead-based paint (“LBP”) hazards in a residential property that receives Federal assistance under certain HUD programs for acquisition, leasing, support services, or operation. In connection with the grant funds under this AGREEMENT, the CITY requires that the SUBRECIPIENT comply and show evidence of compliance with all applicable subparts of 24 CFR 35, and especially, Subpart K (“LBP Regs”).

The SUBRECIPIENT shall conduct the following activities for the dwelling unit, common areas servicing the dwelling unit, and the exterior surfaces of the building in which the dwelling unit is located:

- (1) A visual assessment of all painted surfaces in order to identify deteriorated paint;
- (2) Paint stabilization of each deteriorated paint surface, and clearance, in accordance with §§ 35.1330(a) and (b), before occupancy of a vacant dwelling unit or, where a unit is occupied, immediately after receipt of Federal assistance; and
- (3) Ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a), if the dwelling unit has a continuing, active financial relationship with a Federal housing assistance program, except that mortgage insurance or loan guarantees are not considered to constitute an active programmatic relationship for the purposes of this part.

- (4) And, notice to occupants in accordance with §§ 35.125(b)(1) and (c), describing the results of the clearance examination.

E. Notification of LBP Hazard

The SUBRECIPIENT shall provide to all occupants of housing:

- (1) In accordance with Section 35.130 of the LBP Regs - the LBP hazard information pamphlet. The pamphlet shall be the EPA/HUD/Consumer Product Safety Commission lead hazard information pamphlet or an EPA-approved equivalent.

The current form and version of the pamphlet can be found at:

<http://www.hud.gov/offices/lead/library/enforcement/fs-discl.pdf>

- (2) In accordance with 24 CFR 35, Subpart A, all available information and knowledge regarding the presence of LBP and LBP hazards prior to leasing a housing unit.
- (3) In accordance with 24 CFR 35, Subpart A, notification in writing of the results of the presumption of LBP and/or LBP hazards, results of any lead hazard evaluation, and any lead hazard reduction work.

F. LBP Information Summary

For purposes of information only and in no respect intended to be a representation or warranty of the provisions of the LBP Regulations, the CITY has caused to be prepared an information summary relating to the LBP Regulations and Application to dwelling units that may be occupied by recipients of services and/or funding from the SUBRECIPIENT under this AGREEMENT. CITY staff will cooperate with and be available to the SUBRECIPIENT to assist in implementation of compliance with the LBP Regs as to residential dwelling units to be assisted by the SUBRECIPIENT. The parties acknowledge and agree the CITY shall not be liable or responsible for the accuracy of such summary, and the SUBRECIPIENT is directed to the LBP Regulations and implementing guidance published and provided by HUD relating to compliance with such LBP Regulations.

G. Exemptions

Section 35.115(a) provides exemptions from Subparts B through R. For example, lead-based paint requirements do not apply to housing assistance if the assistance lasts less than one hundred (100) days.

XI. CONFLICTS OF INTEREST

The SUBRECIPIENT shall comply with 2 CFR 200.112 with respect to the use of program funds to procure services, equipment, supplies, or other property. With respect to all other decisions involving the use of program funds, the following restriction shall apply: No person who is an employee, agent, consultant, officer, or elected or appointed official of the SUBRECIPIENT and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or 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 there under,

either for himself or herself, or for those with who he or she has family or business ties, during his or her tenure or for one (1) year thereafter.

The SUBRECIPIENT agrees to abide by the ESG Program's Conflict of Interest provisions as expressly detailed in 24 CFR § 576.404 regarding Organizational Conflicts of Interest and Personal Conflicts of Interest. All contractors of the SUBRECIPIENT must comply with the same requirements that apply to the SUBRECIPIENT under this section.

XII. ASSIGNABILITY

None of the duties of, or work to be performed by, the SUBRECIPIENT under this AGREEMENT shall be subcontracted or assigned to any agency, consultant, or person without the prior written consent of the CITY. The SUBRECIPIENT must submit all subcontracts and other agreements that relate to this AGREEMENT to the CITY. No subcontract or assignment shall terminate or alter the legal obligations of the SUBRECIPIENT pursuant to this AGREEMENT.

XIII. EXCLUSIVITY OF AGREEMENT

This AGREEMENT supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the use of the CITY's ESG Funds by the SUBRECIPIENT and contains all the covenants and agreements between the parties with respect to such ESG Funds in any manner whatsoever. Each party to this AGREEMENT acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement or amendment hereto shall be effective unless executed in writing and signed by both the CITY and the SUBRECIPIENT.

XIV. AMENDMENTS OR MODIFICATIONS

The SUBRECIPIENT shall not obligate, encumber, spend, or otherwise utilize program funds for any activity or purpose not included or not in conformance with the budget as apportioned and as submitted to the CITY unless:

- (1) The SUBRECIPIENT has received explicit written approval from the CITY to undertake such actions, or
- (2) Budget changes may be made among approved program activities and among approved budget categories so long as the specific project activity has been approved, there is no change to the total grant amount, and the changes to the budget are documented.

Any program modification request by the SUBRECIPIENT must be requested at least forty-five (45) days prior to the end of the term of this AGREEMENT. No modification to this AGREEMENT shall be binding by either party unless in writing and signed by both parties.

In the event that the CITY approves any amendment to the funding allocation, the SUBRECIPIENT shall be notified in writing and such notification shall constitute an official amendment.

The CITY may, at its discretion and upon provision of proper notice to the SUBRECIPIENT, amend this AGREEMENT to conform with changes in Federal, State, and/or the CITY laws, regulations, guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this AGREEMENT.

XV. VIOLATION OF TERMS AND CONDITIONS**A. Termination**

If, due to any cause, the SUBRECIPIENT fails to comply with the terms, conditions or requirements of this AGREEMENT, or any prior AGREEMENT whereby ESG funds were received by the SUBRECIPIENT, whether stated in a Federal statute or regulation, an assurance, a State plan or application, a notice of award, or elsewhere, the CITY may terminate or suspend this AGREEMENT in accordance with 2 CFR 200.339 and in accordance with 2 CFR 200.340 by giving written notice, and the CITY may request in writing that all or some of the grant funds be returned even if the SUBRECIPIENT has expended the funds.

If the SUBRECIPIENT reports inaccurately, or if on audit there is a disallowance of certain expenditures, the SUBRECIPIENT agrees to remedy the acts or omissions causing the disallowance and repay the CITY all amounts spent in violation thereof. If the SUBRECIPIENT engaged in fraudulent activity to obtain and/or justify expenditure of the ESG funds granted hereunder, the SUBRECIPIENT shall be required to reimburse the CITY of all such funds that were obtained and/or spent under fraudulent circumstances, and the CITY reserves the right to take other remedies that may be legally available.

The SUBRECIPIENT agrees to return all funds as requested by the CITY under this section within thirty (30) days of receipt of the written request.

Any objections regarding terminations or suspensions shall be made by the SUBRECIPIENT in writing and mailed to the CITY pursuant to the above NOTICES section.

XVI. CLOSE-OUT

The SUBRECIPIENT agrees to comply with the closeout procedures detailed in 2 CFR 200.343, including the following:

1. SUBRECIPIENT must submit, no later than ninety (90) calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award;
2. Unless the CITY authorizes an extension, SUBRECIPIENT must liquidate all obligations incurred under the Federal award not later than ninety (90) calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award;
3. SUBRECIPIENT must promptly refund any balances of unobligated cash that the CITY paid in advance or paid and that is not authorized to be retained by SUBRECIPIENT for use in other projects (See OMG Circular A-129 and 2 CFR 200.345);
4. SUBRECIPIENT must account for any real and personal property acquired with Federal funds or received from the Federal government in accordance with 2 CFR 200.310-200.316 and 200.329; and,
5. The CITY should complete all closeout actions for the Federal award no later than one year after receipt and acceptance of all required final reports.

XVII. VALIDITY AND SEVERABILITY

The invalidity in whole or in part of any provision of this ARGREEMENT shall not void or affect the validity of any other provision of this AGREEMENT. Whenever possible, each provision of this AGREEMENT shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this AGREEMENT.

XVIII. LAWS GOVERNING THIS AGREEMENT

This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, and all applicable federal laws and regulations.

XIX. WAIVER

No delay or omission by the CITY hereto to exercise any right or power accruing upon any noncompliance or default by the SUBRECIPIENT with respect to any of the terms of this AGREEMENT shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

XX. AGREEMENT DOCUMENT, EXHIBITS, AND ATTACHMENTS

All of the attachments and exhibits attached to this AGREEMENT are deemed incorporated by reference. This document may be executed in three (3) counterparts, each of which shall be deemed to be an original.

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this AGREEMENT, and shall indemnify the CITY fully, including reasonable costs and attorney's fees, for any injuries or damages to the CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the date and year first above written.

ATTEST:

CITY OF SANTA ANA
a municipal corporation

DAISY GOMEZ
Clerk of the Council


KRISTINE RIDGE
City Manager

APPROVED AS TO FORM:

SONIA CARVALHO
City Attorney

By: RYAN O. HODGE
Assistant City Attorney

SUBRECIPIENT:


Larry Haynes
Executive Director
Mercy House Living Centers, Inc.
Tax ID: 33-0315864
DUNS #: 87-979-7165

RECOMMENDED FOR APPROVAL:

STEVEN A. MENDOZA
Executive Director
Community Development Agency

City of Santa Ana

Scope of Work

Name of Organization

Mercy House Living Centers

Name of Funded Program

Homeless Prevention Program

Annual Accomplishment Goal

I. Total number of unduplicated clients (Santa Ana and Non-Santa Ana Residents) anticipated to be served by the funded program, named above, during the 12-month contract period.

150 Persons

II. Number of unduplicated Santa Ana residents expected to be served by the funded program during the 12-month contract period.

35 Persons

Program and Funding Description

III. Description of Work - In the space below, describe the program to be funded during the 12-month contract period. What specific activities will be undertaken during the contract period. Please be concise in your response. Only the viewable space will print.

The Homeless Prevention program provides short term financial assistance and case management to Santa Ana Resident households who are at-risk of homelessness and who without assistance would become homeless. Mercy House anticipates serving 35 people during the grant term.

Schedule of Performance

Estimate the number of unduplicated Santa Ana residents to be served by the funded program during the 12-month contract period per quarter. (Enter number of new Santa Ana clients served each quarter. If they were served in quarter 1 do not count them again in quarter 2)

Quarter 1: July 1 - September 30

10 Persons

Quarter 2: October 1 - December 31

10 Persons

Quarter 3: January 1 - March 31

15 Persons

Quarter 4: April 1 - June 30

0 Persons

35 Total unduplicated Santa Ana Residents to be served.

Schedule of Invoicing

Estimate the amount of grant funds to be requested during the 12-month contract period on a quarterly basis.

Quarter 1: July 1 - September 30

\$10,000.00

Quarter 2: October 1 - December 31

\$10,000.00

Quarter 3: January 1 - March 31

\$5,000.00

Quarter 4: April 1 - June 30

\$0.00

\$ 25,000.00 Total Grant

Exhibit A

60A-66

ESG Funded Personnel

Name of Organization:

 Mercy House Living Centers

Name of Program

 Homeless Prevention Program

Program Staff

| Position Title (only list funded positions) | Budget Category | Annual Salary | Hourly Rate | Approximate # of Hours per month serving Santa Ana | Total Amount Requested |
|--|--------------------|------------------|-------------|---|---------------------------|
| Case Manager | Case Mgr | \$ 38,480 | \$ 18.50 | 13% | \$5,000 |
| | | | | | |
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| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Total ESG Requested | | | | | \$ 5,000.00 |

ESG Final Budget

Organization Name Mercy House Living Centers
 Program Name Homeless Prevention Program

Expenditures

| Category | Expenses Funded by Santa Ana | Expenses Funded by Other Sources | Total Program Budget | Total Organizational Budget |
|--|------------------------------|----------------------------------|----------------------|-----------------------------|
| Housing Relocation and Stabilization Services | | | | |
| Financial Assistance | | | | |
| Rent Deposit | | | \$ - | \$ 179,984 |
| Rental Application fees | | | \$ - | |
| Utility Deposit | | | \$ - | |
| Utility | | | \$ - | \$ 217,892 |
| Moving Costs | | | \$ - | \$ 40,000 |
| Service Assistance | | | \$ - | \$ 1,984,088 |
| Hsg Search & Placement | | | \$ - | \$ 760,000 |
| Case Management | \$ 5,000 | \$ 26,500 | \$ 31,500 | \$ 7,544,978 |
| Mediation | | | \$ - | |
| Legal | | | \$ - | |
| Credit Repair | | | \$ - | |
| Rental Assistance | | | | |
| Rent | \$ 19,500 | \$ 55,500 | \$ 75,000 | \$ 4,764,164 |
| Other | | | | |
| Insurance | | | \$ - | \$ 194,992 |
| Professional Fees | | | \$ - | \$ 153,400 |
| Admin/Office | | | \$ - | \$ 481,686 |
| Local Expenses | | | \$ - | \$ 76,418 |
| Indirect Cost | \$ 500 | \$ 10,500 | \$ 11,000 | \$ 1,317,648 |
| Facility Expenses | | | \$ - | \$ 6,115,738 |
| Fundraising | | | \$ - | \$ 202,201 |
| Total | \$ 25,000 | \$ 92,500 | \$ 117,500 | \$ 24,033,189 |

LIST ALL OTHER PROGRAM FUNDS THAT HAVE BEEN SECURED
 (Total Funds for Program must equal Total Program Budget above)

| Source | Amount |
|------------------------------------|-------------------|
| Santa Ana | \$ 25,000 |
| Garden Grove | \$ 15,000 |
| EFSP | \$ 37,500 |
| General Funds | \$ 40,000 |
| | |
| | |
| | |
| | |
| Total Funds for the Program | \$ 117,500 |

City of Santa Ana

Scope of Work

Name of Organization

Mercy House Living Centers

Name of Funded Program

The Link - Interim Emergency Shelter

Annual Accomplishment Goal

I. Total number of unduplicated clients (Santa Ana and Non-Santa Ana Residents) anticipated to be served by the funded program, named above, during the 12-month contract period.

375 Persons

II. Number of unduplicated Santa Ana residents expected to be served by the funded program during the 12-month contract period.

375 Persons

Program and Funding Description

III. Description of Work - In the space below, describe the program to be funded during the 12-month contract period. What specific activities will be undertaken during the contract period. Please be concise in your response. Only the viewable space will print.

Emergency Shelter will be provided to homeless adults and families with ties to the City of Santa Ana at the Link - Interim Emergency Shelter location. While in the program participants will have access to emergency assistance including shelter, meals, and hygiene facilities.

Additionally, participants receive assessment and housing navigation services as well as connections to employment, mental health, veteran, and substance use services. Employment and Housing Navigators conduct individual assessment of needs, followed by provision of targeted services (Housing Plan) focused on returning individuals to permanent housing as quickly as possible. Navigators conduct VI-SPDAT assessments and enter participants in the Orange County Coordinated Entry System and prioritization list, ensuring that shelter clients are connected to permanent supportive and rapid rehousing opportunities in the community. Shelter clients are provided assistance to obtain necessary documents, employment guidance and linkages to community resources and meet weekly with their assigned Navigators.

ESG funding will be used to support Essential Services and Operations including expenses associated with the salary and benefits of the site lead and housing navigators at the shelter and logistical staff.

Schedule of Performance

Estimate the number of unduplicated Santa Ana residents to be served by the funded program during the 12-month contract period per quarter. (Enter number of new Santa Ana clients served each quarter. If they were served in quarter 1 do not count them again in quarter 2)

Quarter 1: July 1 - September 30

200 Persons

Quarter 2: October 1 - December 31

175 Persons

Quarter 3: January 1 - March 31

0 Persons

Quarter 4: April 1 - June 30

0 Persons

375 Total unduplicated Santa Ana Residents to be served.

Schedule of Invoicing

Estimate the amount of grant funds to be requested during the 12-month contract period on a quarterly basis.

Quarter 1: July 1 - September 30

\$50,490.00

Quarter 2: October 1 - December 31

\$50,490.00

Quarter 3: January 1 - March 31

\$50,488.00

Quarter 4: April 1 - June 30

\$0.00

\$ 151,468.00 Total Grant

Exhibit A

Page 1 of 1
60A-69

ESG Final Budget

Organization Name Mercy House Living Centers

Program Name The Link - Interim Emergency Shelter

Expenditures

| Category | Expenses Funded by Santa Ana | Expenses Funded by Other Sources | Total Program Budget | Total Organizational Budget |
|-----------------------|------------------------------|----------------------------------|----------------------|-----------------------------|
| Essential Services | | | | |
| Case Management | \$ 51,468 | \$ 97,650 | \$ 149,118 | \$ 1,157,587 |
| Support Services | | \$ 6,000 | \$ 6,000 | \$ 7,186,128 |
| Transportation | | \$ 200,000 | \$ 200,000 | \$ 874,100 |
| - | | | \$ - | |
| Shelter Operations | | | | |
| Shelter Staff | \$ 100,000 | \$ 779,382 | \$ 879,382 | \$ 5,159,722 |
| Security Guards | | \$ 560,000 | \$ 560,000 | \$ 2,777,000 |
| Facility Expenses | | \$ 661,000 | \$ 661,000 | \$ 1,797,461 |
| Equipment Rentals | | \$ 10,000 | \$ 10,000 | \$ 37,250 |
| Shelter Supplies | | \$ 315,000 | \$ 315,000 | \$ 1,424,027 |
| Insurance | | \$ 10,000 | \$ 10,000 | \$ 194,992 |
| - | | | \$ - | |
| - | | | \$ - | |
| Other | | | | |
| Misc. Agency Expenses | | | \$ - | \$ 2,107,274 |
| - | | | \$ - | |
| Indirect Cost | | \$ 85,134 | \$ 85,134 | \$ 1,317,648 |
| - | | | \$ - | |
| Total | \$ 151,468 | \$ 2,724,166 | \$ 2,875,634 | \$ 24,033,189 |

LIST ALL OTHER PROGRAM FUNDS THAT HAVE BEEN SECURED
(Total Funds for Program must equal Total Program Budget above)

| Source | Amount |
|------------------------------------|---------------------|
| Santa Ana | \$ 151,468 |
| City of Santa Ana | \$ 2,724,166 |
| | |
| | |
| | |
| | |
| | |
| | |
| Total Funds for the Program | \$ 2,875,634 |

ESG Funded Personnel

Name of Organization:

 Mercy House Living Centers

Name of Program

 The Link -Interim Emergency Shelter

Program Staff

| Position Title (only list funded positions) | Budget Category | Annual Salary | Hourly Rate | Approximate # of Hours per month serving Santa Ana | Total Amount Requested |
|--|--------------------|------------------|-------------|---|---------------------------|
| Housing Navigators | Essential | \$ 33,568 | \$16.14 | 100% | \$51,468 |
| Site Lead | Operations | \$ 35,360 | \$17.00 | 100% | \$20,000 |
| Logistics Staff | Operations | \$ 31,200 | \$15.00 | 100% | \$80,000 |
| | | | | | |
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| | | | | | |
| Total ESG Requested | | | | | \$ 151,468.00 |

City of Santa Ana

Scope of Work

Name of Organization

Mercy House Living Centers

Name of Funded Program

Rapid Rehousing Program

Annual Accomplishment Goal

I. Total number of unduplicated clients (Santa Ana and Non-Santa Ana Residents) anticipated to be served by the funded program, named above, during the 12-month contract period.

500 Persons

II. Number of unduplicated Santa Ana residents expected to be served by the funded program during the 12-month contract period.

12 Persons

Program and Funding Description

III. Description of Work - In the space below, describe the program to be funded during the 12-month contract period. What specific activities will be undertaken during the contract period. Please be concise in your response. Only the viewable space will print.

Mercy House will provide Rapid Rehousing assistance to 12 homeless persons who will receive security deposit assistance, rental assistance, case management and housing search and placement services. It is anticipated that the majority of clients will need medium term assistance (6-12 months).

As required by ESG, all referrals for the program will come from the Coordinated Entry System and will have connections to the City of Santa Ana. Priority will be given to those who are exiting directly from The Link emergency shelter.

Schedule of Performance

Estimate the number of unduplicated Santa Ana residents to be served by the funded program during the 12-month contract period per quarter. (Enter number of new Santa Ana clients served each quarter. If they were served in quarter 1 do not count them again in quarter 2)

Quarter 1: July 1 - September 30

3

Persons

Quarter 2: October 1 - December 31

7

Persons

Quarter 3: January 1 - March 31

2

Persons

Quarter 4: April 1 - June 30

0

Persons

12

Total unduplicated Santa Ana Residents to be served.

Schedule of Invoicing

Estimate the amount of grant funds to be requested during the 12-month contract period on a quarterly basis.

Quarter 1: July 1 - September 30

\$15,000.00

Quarter 2: October 1 - December 31

\$30,000.00

Quarter 3: January 1 - March 31

\$30,000.00

Quarter 4: April 1 - June 30

\$25,000.00

\$ 100,000.00

Total Grant

Exhibit A

Page 1 of 1
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ESG Final Budget

Organization Name Mercy House Living Centers
 Program Name Rapid Rehousing Program

Expenditures

| Category | Expenses Funded by Santa Ana | Expenses Funded by Other Sources | Total Program Budget | Total Organizational Budget |
|--|------------------------------|----------------------------------|----------------------|-----------------------------|
| Housing Relocation and Stabilization Services | | | | |
| Financial Assistance | | | | |
| Rent Deposit | \$ 19,700 | \$ 138,556 | \$ 158,256 | \$ 179,984 |
| Rental Application fees | | | \$ - | |
| Utility Deposit | | | \$ - | |
| Utility | | \$ 39,151 | \$ 39,151 | \$ 217,892 |
| Moving Costs | | \$ 4,320 | \$ 4,320 | \$ 40,000 |
| Service Assistance | | \$ 6,624 | \$ 6,624 | \$ 1,984,088 |
| Hsg Search & Placement | | \$ 227,978 | \$ 227,978 | \$ 760,000 |
| Case Management | \$ 34,600 | \$ 903,701 | \$ 938,301 | \$ 7,544,978 |
| Mediation | | | \$ - | |
| Legal | | | \$ - | |
| Credit Repair | | | \$ - | |
| Rental Assistance | | | | |
| Rent | \$ 42,300 | \$ 2,058,485 | \$ 2,100,785 | \$ 4,764,164 |
| Other | | | | |
| Insurance | | \$ 5,285 | \$ 5,285 | \$ 194,992 |
| Professional Fees | | \$ 10,080 | \$ 10,080 | \$ 153,400 |
| Admin/Office | | \$ 49,196 | \$ 49,196 | \$ 481,686 |
| Local Expenses | | \$ 15,264 | \$ 15,264 | \$ 76,418 |
| Indirect Cost | \$ 3,400 | \$ 69,752 | \$ 73,152 | \$ 1,317,648 |
| Facility Expenses | | | \$ - | \$ 6,115,738 |
| Fundraising | | | \$ - | \$ 202,201 |
| Total | \$ 100,000 | \$ 3,528,391 | \$ 3,628,391 | \$ 24,033,189 |

LIST ALL OTHER PROGRAM FUNDS THAT HAVE BEEN SECURED
 (Total Funds for Program must equal Total Program Budget above)

| Source | Amount |
|------------------------------------|---------------------|
| Santa Ana | \$ 100,000 |
| HDAP (CA State) | \$ 167,704 |
| State ESG | \$ 227,114 |
| Anaheim ESG | \$ 20,000 |
| Garden Grove TBRA | \$ 250,000 |
| Huntington Beach TBRA | \$ 305,694 |
| Anaheim TBRA | \$ 182,538 |
| Adult ReEntry (CA State) | \$ 601,819 |
| CA State General Funds | \$ 550,000 |
| HEAP Funds | \$ 72,247 |
| Bringing Families Home | \$ 901,275 |
| Private Funds | \$ 250,000 |
| Total Funds for the Program | \$ 3,628,391 |

Exhibit B

ESG Funded Personnel

Name of Organization:

 Mercy House Living Centers

Name of Program

 Rapid Rehousing Program

Program Staff

| Position Title (only list funded positions) | Budget Category | Annual Salary | Hourly Rate | Approximate # of Hours per month serving Santa Ana | Total Amount Requested |
|--|--------------------|------------------|-------------|---|---------------------------|
| Case Manager(s) | Case Mgr | \$ 38,480 | \$ 18.50 | 90% | \$34,600 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
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| | | | | | |
| | | | | | |
| Total ESG Requested | | | | | \$ 34,600.00 |

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS FOR CERTIFICATION - Attached)

- (1) The prospective recipient of federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- (2) Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective recipient of federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and voluntary exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the List of Parties Excluded from Procurement or Non-Procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans, and cooperative agreements) 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 Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

| | |
|--------------------------------|---------------|
| Grantee/Contactor Organization | Program Title |
|--------------------------------|---------------|

| | | |
|----------------------------|-----------|------|
| Name of Certifying Officer | Signature | Date |
|----------------------------|-----------|------|

SUBRECIPIENT warrants the following:

1. SUBRECIPIENT will comply with Public Law 88-352, Title VI of the Civil Rights Act of 1964 (42 U. S. C. section 2000 et seq.) and implementing regulation in 24 CFR Part 1.
2. No person in the United States shall on the ground of race, color, religion, national origin, or sex, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds made available pursuant to the ACT.
3. All laborers and mechanics, employed by contractors or subcontractors in the performance of construction work financed in whole or in part with community development funds shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined in accordance with the Davis-Bacon Act, as amended, 40 U. S. C. Sections 276 a 1-5, except for individuals who perform services for which they volunteered; do not receive compensation for such services; or are paid expenses, reasonable benefits, or a nominal fee for such services; and are not otherwise employed at any time in construction work.
4. SUBRECIPIENT will comply with all Federal statutes applicable to projects funded with community development funds, except that (a) SUBRECIPIENT does not assume CITY'S environmental responsibilities described at 24 CFR 570.604; and (b) SUBRECIPIENT does not assume CITY'S responsibility for initiating the review process under Executive Order 12372.

Orange County CoC Inter-Agency Data Sharing Memorandum of Agreement

The _____ agency agrees to share client data among participating agencies via the LA/OC HMIS (Homeless Management Information System) for the purposes outlined below. Each participating agency must complete and comply with the **Agency Agreement**. Each individual HMIS user must complete and comply with the **HMIS User Agreement**. This document is available on the OCHMIS website <http://www.ochmis.org>.

Uses of HMIS Data:

- Coordinate housing services for families and individuals experiencing homelessness or facing a housing crisis in Orange County
- Understand the extent and the nature of homelessness in Orange County
- Evaluate performance and progress toward community benchmarks
- Improve the programs and services available to Orange County residents experiencing homelessness or a housing crisis
- Improve access to services for all Orange County homeless and at-risk populations
- Reduce inefficiencies and duplication of services within our community
- Ensure that services are targeted to those most in need, including "hard to serve" populations
- Ensure that clients receive the amount and type of services that "best fits" their needs and preferences
- Pursue additional resources for ending homelessness
- Advocate for policies and legislation that will support efforts to end homelessness in Orange County

Client Protection:

- Informed consent must be given by clients in order for their identifying information to be entered into HMIS and shared among agencies in the LA/OC HMIS (see Orange County HMIS participating agencies on OCHMIS.org). Non-identifying client information may be entered in the system for all clients regardless of whether they give their informed consent and regardless of their domestic violence status.
- Only non-identifying information will be entered for clients currently fleeing or in danger from a domestic violence, dating violence, sexual assault or stalking situation.
- Identifying client information will only be shared among agencies that have signed this agreement. At the time of informed consent, and at any point after, the client has the right to see a current list of the OC HMIS participating agencies.
- Additional agencies may join the LA/OC HMIS and will be added to the list of HMIS participating agencies. As part of the informed consent process, clients must be informed that additional agencies may join the collaborative at any time and will have access to their information.
- HMIS Users will maintain HMIS data in such a way as to protect against revealing the identity of clients to unauthorized agencies, individuals, or entities (see the "OC HMIS Client Consent Form," and the "Client Rights Brochure OC" available on the OCHMIS.org website).
- Clients may not be denied services based on their choice to withhold their consent.

Each party to this memorandum of agreement shall defend, indemnify, and hold all other parties harmless from any and all claims arising out of that party's negligent performance of this agreement. Any loss or liability to third parties resulting from negligent acts, errors, or omissions of a LA/OC HMIS user while acting within the scope of their authority under this Agreement shall be borne by that user exclusively.

Agreed to and signed by the following agency representative:

Printed Name

Agency Name

Signature

Date

**GREATER LOS ANGELES & ORANGE COUNTY
HOMELESS MANAGEMENT INFORMATION SYSTEM (LA/OC HMIS)**

PARTICIPATING ORGANIZATION AGREEMENT

I. Purpose

The HMIS is a HUD-mandated information technology system that is designed to capture client-level information over time, on the characteristics and service needs of homeless persons. Client data is maintained on a central server, which will contain all client information in an encrypted state. HMIS integrates data from all homeless service providers and organizations in the community and captures basic descriptive information on every person served. Participation in LA/OC HMIS allows organizations to share information with other participating organizations to create a more coordinated and effective delivery system.

The LA/OC HMIS is the secured electronic database for the Greater Los Angeles and Orange Counties and is a valuable resource for local communities. The LA/OC HMIS Collaborative consists of four separate Continuums of Care (CoC). The continuums are: Los Angeles City and County; Santa Ana/Anaheim/Orange County; Glendale; and Pasadena.

The LA/OC HMIS Collaborative's goal is to provide a comprehensive case management system to advance the provision of quality services for homeless persons, improve data collection, and promote more responsive policies to end homelessness in the Greater Los Angeles and Orange Counties.

II. Agreement and Understanding

This Agreement authorizes this Participating Organization (Organization) to designate HMIS Users (User). A User is a staff person entrusted to enter Protected Personal Information (PPI) into the LA/OC HMIS, on behalf of this Organization. In order to allow a User to access the LA/OC HMIS, a User Agreement must be signed by the User, the HMIS Administrator, and this Organization's Authorized Representative.

III. Confidentiality and Informed Consent

Confidentiality: This Organization must require all Users to abide by its organization's policies and procedures; uphold all privacy protection standards established by the LA/OC HMIS Collaborative Policies and Procedures; and comply with all relevant federal and State of California confidentiality laws and regulations that protect client records. Except where otherwise provided for by law, this Organization shall ensure that confidential client records are released with the client's written consent.

Written Consent: To obtain written consent, prior to each client's assessment, each client must be informed that the client's information will be entered into an electronic database called HMIS. The terms of the *Consent to Share Protected Personal Information* form must also be explained to each client. Clients who agree to have their PPI entered into the LA/OC HMIS must sign the *Consent to Share Protected Personal Information* form.

Verbal Consent: Verbal consent to enter PPI into the LA/OC HMIS may be obtained during circumstances such as phone screenings, street outreach, or community access center sign-ins. Each client must be informed that his or her information will be entered into the HMIS database. The terms of the *Consent to Share Protected Personal Information* form must also be explained to each client. The client's written consent must be obtained once the client appears for his or her initial assessment.

IV. Client's Rights

The client has a right to receive a copy of this notice at the time of request.

Each client has the right to receive the following, no later than five (5) business days of a written request:

- A correction of inaccurate or incomplete PPI
- A copy of his or her consent form
- A copy of his or her HMIS records
- A current list of participating organizations that have access to HMIS data

V. Data Use

This Organization must protect HMIS data by ensuring that:

- A link to the Privacy Notice is accessed from the Organization's website.
- LA/OC HMIS is not accessible to unauthorized users
- LA/OC HMIS is only accessed by computers approved by the Organization
- HMIS Users are trained regarding user responsibilities and conduct
- HMIS Users sign and comply with the *LA/OC HMIS User Agreement*
- HMIS Users forward a copy of a client's Revocation of Consent to the HMIS Administrator within 24 hours of receipt.

VI. Responsibilities

This Organization is responsible to ensure that:

- The *Notice Regarding Collection of Personal Information* is posted at each intake desk or comparable location.
- HMIS Users do not misuse the system
- Clients are notified if a breach of their PPI is discovered
- Any HMIS User who finds a possible security lapse on the system is obligated to immediately report it to the HMIS Administrator.
- A signed copy of the *Consent to Share Protected Personal Information* is retained for a period of seven (7) years after the PPI was created or last changed.

VII. System Use

Computer equipment and services provided by a CoC are intended only for LA/OC HMIS-related activities.

Prohibited uses include, but are not limited to: malicious or illegal activities; unauthorized access; the creation, sending and/or storing of fraudulent, threatening, harassing, or obscene messages; inappropriate mass mailing (spamming, flooding, bombing); denial of service attacks; and the creation or intentional distribution of computer viruses, worms, and/or Trojan horses.

Equipment, if applicable: All CoC-provided computer equipment including, but not limited to, printers, scanners, laptops and monitors, were provided through grant funds from HUD. The maintenance and upgrades of these devices are subject to the requirements and funding limitations of the HUD grant. Maintenance and/or upgrade costs to equipment, incurred after the HUD grant funds have been exhausted, become the sole responsibility of this Organization.

Software, Licenses, and/or Services, if applicable: CoC-provided services to each organization may include, but are not limited to, purchasing and installing Anti-Virus Software and licenses, Firewall software and licenses, Windows software updates and High-Speed Internet Connections. The software and/or services are provided for HMIS purposes through HUD grant funds. The maintenance, upgrades and license purchases are subject to the requirements and funding limitations of the HUD grant. Additional maintenance, upgrades and license purchases, incurred after the grant funds have been exhausted, become the sole responsibility of this Organization.

VIII. Rights and Privileges

LA/OC HMIS data is stored in one central database and is owned by the LA/OC HMIS Collaborative. The LA/OC HMIS Collaborative reserves all rights to the HMIS data. Use of the LA/OC HMIS equipment, software, licenses, and/or services is a privilege and is assigned and managed by each HMIS Administrator.

IX . Copyright

The LA/OC HMIS and other CoC-provided software are protected by copyright and are not to be copied, except as permitted by law or by contract with the owner of the copyright. The number and distribution of copies of any CoC provided software are at the sole discretion of the HMIS Administrator.

X. Violations

Any violations or suspected violations of any of the terms and conditions of this agreement, the HMIS User Agreement, and/or the HMIS Policies and Procedures, must be immediately and confidentially reported to the HMIS Administrator and the Executive Director or other authorized representative of this Organization.

XI. Term

This Participating Organization Agreement becomes effective on the date of final execution and shall remain in effect unless terminated pursuant to paragraph XI. Termination, below.

XII. Amendment and Termination

- The LA/OC CoC reserves the right to amend this agreement by providing a 3-day notice to this Organization.
- Either party has the right to terminate this agreement, with or without cause, by providing a 3-day written notice to the other party.
- If this agreement is terminated, this Organization shall no longer have access to HMIS or any information therein. The remaining LA/OC HMIS participating organizations shall retain the right to use all client data previously entered by this Organization, subject to any restrictions requested by the client.

All organizations that sign this agreement and are granted access to the LA/OC HMIS agree to abide by LA/OC's HMIS Collaborative Policies and Procedures. The signature of the Executive Director or other authorized representative of this Organization indicates acceptance of all terms and conditions set forth in this agreement.

This Agreement is executed between the CoC and the Participating Organization. Upon final execution, this Organization will be given access to the LA/OC HMIS.

 Organization Name

 CoC Name

 Organization Administrator/Authorized Representative
(Print Name)

 HMIS Administrator Name (Print Name)

 Signature

 Signature

 Date of Signature

 Date of Signature

Memorandum of Understanding (MOU)
between
ORGANIZATION NAME
and
The City of Santa Ana W/O/R/K Center

1. **PARTIES:** The parties to this Memorandum of Understanding (MOU) are _____ and the City of Santa Ana W/O/R/K Center ("Work Center").
2. **PURPOSE:** The Work Center, in conjunction with _____, endeavors to establish a cooperative working relationship between the parties in order to provide program beneficiaries with information about Work Center opportunities to find better jobs and careers. The MOU serves to establish the framework for providing services to employees, job seekers and others needing workforce services. The goal is to ensure that all program beneficiaries have been provided an opportunity to connect with the Work Center and be assisted with the tools and knowledge necessary to enter the workforce or obtain a higher-paying job.
3. **RESPONSIBILITIES:**
 - A) The Work Center shall perform the following:
 - 1) Accept referrals to the Work Center.
 - B) _____ shall perform the following:
 - 1) Provide Work Center information to participants and their families; and,
 - 2) Refer participants in need of employment, training, or career counseling to the Work Center utilizing the referral form attached hereto as Attachment 1 and incorporated herein by reference.
4. **DURATION:** This MOU shall commence on July 1, 2019, and shall remain in effect through June 30, 2020.
5. **AMENDMENTS:** Either party may propose amendments to this MOU at any time by providing written notice to the other party. Amendments to this MOU shall require the approval of the City Manager, or her/his designee ("City Manager"), on behalf of the Work Center.
6. **CONFIDENTIALITY:** If _____ receives information, which due to the nature of such information is reasonably understood to be confidential and/or proprietary, such information shall not be used or disclosed except in the performance of this MOU, and _____ agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all non-public information. Confidential

information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this MOU. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of _____ disclosed in a publicly available source; (c) is in rightful possession of _____ without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by _____ without reference to information disclosed by the City of Santa Ana.

7. **ACCESSABILITY:** ORGANIZATION NAME will assure that its services and premises are accessible to persons with disabilities pursuant to the requirements of the Americans with Disabilities Act.
8. **HOLD HARMLESS CLAUSE:** Each party to this MOU agrees to indemnify and hold harmless the other parties, their officers, agents, employees, and volunteers from and against any and all loss or damage, and from any and all suits, actions and claims filed or brought by any person or persons arising out of acts or omissions of the party or its officers, agents, employees or volunteers in the performance of this MOU.
9. **DISPUTES:** The parties shall first attempt to resolve all disputes informally. Any party may call a meeting of all parties to discuss and resolve disputes. Should informal resolution efforts fail, the dispute shall be referred to the City Manager to act as mediator, to attempt to resolve the dispute by holding an informal hearing with presentations by both parties. If the City Manager's resolution efforts fail, any party may file a grievance with the City Manager for review and hearing. The parties agree to be bound by the final determination resulting from that procedure. Each party to bear its own costs associated with any grievance procedures.
10. **DISCRIMINATION:** _____ shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. _____ affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.
11. **SEVERABILITY:** If any part of this MOU is found to be null and void, or is otherwise stricken, the rest of this MOU shall remain in force.
12. **JURISDICTION:** Jurisdiction over any disputes arising under this MOU shall reside in Orange County, California.
13. **AUTHORITY AND SIGNATURES:** The individuals signing this MOU or its attachments have the authority to commit the party they represent to the terms of this MOU, and do so commit by signing.