

**EMERGENCY SOLUTIONS GRANTS AGREEMENT**

**By and Between**

**CITY OF OXNARD**

**And**

**\*\*\*INSERT PARTY NAME\*\*\***

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## EMERGENCY SOLUTIONS GRANTS AGREEMENT

This **EMERGENCY SOLUTIONS GRANTS AGREEMENT** (this “**Agreement**”), dated for purposes of identification only as of **\*\*\*INSERT DATE\*\*\*** (the “**Date of Agreement**”), is made and entered into by and between the **CITY OF OXNARD**, a municipal corporation (“**OXNARD**”), and **\*\*\*INSERT NAME\*\*\***, a **\*\*\*INSERT TYPE OF LEGAL ENTITY, e.g., a California non-profit corporation, a Texas limited liability partnership\*\*\*** (“**SUBRECIPIENT**”).

### RECITALS

- A.** OXNARD is the recipient of funds (the “**ESG Funds**”) from the United States Department of Housing and Urban Development (“**HUD**”) for Fiscal Year **\*\*\*INSERT FISCAL YEARS, e.g. 2014-2015\*\*\*** under the Emergency Solutions Grants Program (“**ESG**”) (as authorized by Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (the “**HEARTH Act**”)) for the purposes of (i) the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, (ii) the payment of certain expenses related to operating emergency shelters, (iii) essential services related to emergency shelters and street outreach for the homeless, and (iv) homelessness prevention and rapid re-housing assistance.
- B.** OXNARD desires to make the ESG Funds available to eligible subrecipients who want to operate a homeless assistance and/or homelessness prevention program in accordance with the terms and provisions of the HEARTH Act and the ESG Regulations.
- C.** SUBRECIPIENT provides services related to, among other things, the provision of assistance to help individuals and families regain stability in permanent housing after experiencing a housing crisis or homelessness.
- D.** SUBRECIPIENT submitted to OXNARD an application to obtain a grant of Fiscal Year **\*\*\*INSERT FISCAL YEARS, e.g. 2014-2015\*\*\*** ESG Funds under the HEARTH Act and the ESG Regulations.
- E.** SUBRECIPIENT’s grant award of ESG Funds was approved by the City Council of the City of Oxnard.
- F.** HUD has heretofore approved OXNARD’s ESG application for Fiscal Year **\*\*\*INSERT FISCAL YEARS, e.g. 2014-2015\*\*\*** and provided a grant agreement for OXNARD to execute.
- G.** OXNARD and SUBRECIPIENT (each, a “**Party**” and jointly, the “**Parties**”) desire to enter into this Agreement so that SUBRECIPIENT may receive a grant of the ESG Funds in consideration of SUBRECIPIENT’s (i) contribution of funds equal to amount of ESG Funds granted to the SUBRECIPIENT hereunder and (ii) provision of certain services to OXNARD and the community.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

**Section 1. Definitions.**

The following capitalized terms used in this Agreement shall have the following meanings:

**“Agreement”** means this Emergency Solutions Grants Agreement by and between OXNARD and SUBRECIPIENT.

**“Amount of Grant”** is identified in the Budget presented in **Exhibit B**.

**“OXNARD”** is defined in the initial paragraph of this Agreement and includes any assignee of or successor to the rights, powers and responsibilities of OXNARD.

**“Authorized Expenditures”** means the SUBRECIPIENT’s Budget for the use of ESG Funds authorized under this Agreement for the costs of providing the Services, which Budget is set forth on **Exhibit B** attached hereto.

**“CFR”** means the Code of Federal Regulations.

**“Clients”** means the families and individuals who receive the SUBRECIPIENT services under this Agreement

**“Conditions to Disbursement”** is defined in Section 2.3 hereof.

**“Consolidated Plan”** means a plan prepared by OXNARD and approved by HUD in accordance with 24 CFR Part 91.

**“Continuum of Care”** shall have the meaning provided in 24 CFR 576.2.

**“Covenants Re: Use of Federal Funds”** means those additional covenants of SUBRECIPIENT required due to the federal source of the Grant Proceeds, which are attached hereto as **Exhibit C** and incorporated herein by this reference.

**“Date of Agreement”** is defined in the initial paragraph of this Agreement.

**“Default”** is defined in Section 6.1 hereof.

**“Director”** means the Director of OXNARD’s Housing Department, or his or her designee. The Director of the Housing Department of the City of Oxnard, or his or her designee shall represent OXNARD in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by OXNARD, the Director is authorized to act on behalf of OXNARD unless this Agreement specifically provides otherwise or the context should otherwise require.

**“Effective Date”** is defined in Section 9.14 hereof.

**“Eligible Costs”** means the costs allowed under 24 CFR 576 Subpart B.

**“Emergency Shelter Component”**, as more particularly described in 24 CFR 576.102, means the use of ESG Funds for the costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.

**“ESG”** is defined in **Recital A** hereof.

**“ESG Regulations”** means the regulations at 24 CFR Part 576, which govern the ESG Program.

**“ESG Funds”** is defined in **Recital A** hereof.

**“Grant”** is defined in Section 2.1 hereof.

**“Grant Proceeds”** means the proceeds of the Grant.

**“Governmental Requirements”** means all laws, ordinances, resolutions, statutes, codes, rules, regulations, orders, and decrees of the United States, the State, the City, and of any other political subdivision, agency or instrumentality exercising jurisdiction over OXNARD or SUBRECIPIENT, including, without limitation, the HEARTH Act, the ESG Regulations, the Written Standards for Providing ESG Assistance, and any statutes, rules, regulations and laws referenced in the ESG Regulations (for example, the shelter and housing standards set forth at 24 CFR 576.403, the conflict of interest requirements set forth at 24 CFR 576.404, and other Federal requirements set forth at 24 CFR 576.407), as the same may be amended from time to time.

**“Homeless”** shall have the meaning provided in 24 CFR 576.2.

**“Homeless Management Information Systems Component” or “HMIS Component”**, as more particularly in 24 CFR 576.107, means the use of ESG Funds to pay the costs of contributing data to the information system designated by the Continuum of Care to comply with HUD’s data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness.

**“Homeless Prevention Component”**, as more particularly described in 24 CFR 576.103, means the use of ESG Funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the “homeless” definition in 24 CFR 576.2.

**“Housing Relocation and Stabilization Services”** shall have the meaning provided in 24 CFR 576.105.

**“HUD”** is defined in **Recital A** hereof.

**“Mainstream Resources”** means those mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible, including, for example, those programs described in 24 CFR 576.400(c).

**“Matching Contribution”** means the amount of matching contributions required of SUBRECIPIENT under 24 CFR 576.201, which may be in the form of cash and/or non-cash contributions, as identified by SUBRECIPIENT and approved by OXNARD.

**“Parties”** is defined in **Recital F** hereof.

**“Program Income”** shall have the meaning provided in 24 CFR 85.25. See **Exhibit D** attached hereto for a complete description of Program Income.

**“Quarterly Report”** means a quarterly performance report given by SUBRECIPIENT to OXNARD in a format prescribed by OXNARD on the status of SUBRECIPIENT’s performance of its Scope of Services and evidence of compliance with the ESG Regulations, which report shall be submitted no later than the 15<sup>th</sup> day of each October, January and April during the Term of this Agreement and on the 15<sup>th</sup> day of July following the expiration of the Term hereof.

**“Rapid Re-housing Assistance Component”**, as more particularly described in 24 CFR 576.104, means the use of ESG Funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.

**“Rehabilitation”** (whether major or moderate) means labor, materials, tools, and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings, and structural changes necessary to make the structure accessible for persons with physical disabilities.

**“Risk Manager”** means the OXNARD Chief Financial Officer or his or her designee.

**“Salary”** means the reasonable salaries, wages and related costs of SUBRECIPIENT’s Staff engaged in the performance and administration of the Services.

**“Scope of Services”** means the Services authorized to be performed by SUBRECIPIENT under this Agreement attached hereto as **Exhibit A** and incorporated herein by this reference.

**“Short-Term and Medium-Term Rental Assistance”** shall have the meaning provided in 24 CFR 576.106.

**“Street Outreach Component”**, as more particularly described in 24 CFR 576.101,

means the use of ESG Funds for the costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, non-facility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility.

“**SUBRECIPIENT**” is a private nonprofit organization that is a secular or religious organization described in Section 501(c) of the Internal Revenue Code of 1986 and which is exempt from taxation under subtitle A of the Internal Revenue Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance.

“**SUBRECIPIENT’s Representative**” is defined in the Scope of Services. The SUBRECIPIENT’s Representative shall represent SUBRECIPIENT in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by SUBRECIPIENT, the SUBRECIPIENT’s Representative is authorized to act on behalf of SUBRECIPIENT unless this Agreement specifically provides otherwise or the context should otherwise require.

“**Targeted Homeless Programs**” means those programs, other than the ESG Program, targeted to homeless people in the area covered by the Continuum of Care to provide a strategic, community-wide system to prevent homelessness for that area, including those programs described in 24 CFR 576.400(b).

“**Written Standards for Providing ESG Assistance**”, as more particularly described in 24 CFR 576.400(e)(1), means the written standards for providing ESG assistance prepared by OXNARD, which are included within OXNARD’s Consolidated Plan and must be applied consistently by SUBRECIPIENT for all Program Participants.

## **Section 2. Grant.**

**2.1 Amount of Grant.** OXNARD agrees to grant to SUBRECIPIENT ESG Funds in an amount equal to the Amount of Grant set forth in **Exhibit B**, subject to all of the terms, covenants and conditions of this Agreement. SUBRECIPIENT shall use the Grant Proceeds to pay for Authorized Expenditures only and for no other purpose.

**2.2 Disbursement of Grant Proceeds.** Upon satisfaction of the Conditions to Disbursement or written waiver thereof by OXNARD, OXNARD shall distribute the Grant Proceeds in quarterly installments, as requested by SUBRECIPIENT, in arrears, in order to reimburse SUBRECIPIENT for Authorized Expenses incurred by SUBRECIPIENT in the rendering of Services under this Agreement. In order to spread disbursement of the Grant over the full fiscal year, no quarterly disbursement shall exceed twenty-five percent (25%) of the Total Award except in the final billing period. Requests for disbursements by SUBRECIPIENT shall be made by SUBRECIPIENT sending to OXNARD, not more frequently than quarterly, a detailed invoice in a form specified and approved by OXNARD. Each invoice shall be accompanied by documentation confirming the SUBRECIPIENT’s Matching Contribution and the Quarterly Report covering the time period for which the invoice is submitted.

**2.3 Conditions Precedent to Disbursement.** SUBRECIPIENT agrees further that OXNARD shall not be obligated to make any disbursement of the Grant Proceeds unless and until SUBRECIPIENT has fulfilled all of OXNARD’s customary conditions for a Grant

(the “**Conditions to Disbursement**”). Such conditions include, for purposes of guidance and illustration, but are not limited to, the following:

- A. OXNARD shall have received all insurance certificates required by it pursuant to and in accordance with Section 5.1 of this Agreement.
- B. OXNARD shall have received evidence that SUBRECIPIENT is a corporation duly organized and existing as a California non-profit corporation presently in good standing; that SUBRECIPIENT has the power as a corporation to enter into this Agreement; that all documents executed by SUBRECIPIENT pertaining to the Grant are valid and binding obligations of SUBRECIPIENT, enforceable according to their terms; and that the officers and agents executing such documents are duly empowered and authorized to execute them.
- C. OXNARD shall have received copies of any and all licenses, permits, notices, and certificates required by OXNARD pursuant to and in accordance with Section 4.6 of this Agreement.

The Director may waive or modify in writing any of the Conditions to Disbursement of the Grant Proceeds.

**2.4 Modification of Grant.** OXNARD reserves the right to reduce the Amount of Grant when OXNARD’s fiscal monitoring indicates that SUBRECIPIENT’s rate of expenditure will result in unspent funds at the end of the program year. Changes in the Amount of Grant will be done after consultation with SUBRECIPIENT. Such changes shall be incorporated into this Agreement by written amendments.

**2.5 Fiscal Limitations.** The United States of America, through HUD, may in the future place programmatic or fiscal limitations on ESG Funds not presently anticipated. Accordingly, OXNARD reserves the right to revise this Agreement in order to take account of actions affecting HUD program funding. In the event of funding reduction, OXNARD may reduce the Amount of Grant for this Agreement as a whole or may limit the rate of SUBRECIPIENT’s use of both its uncommitted and its unspent funds. If HUD directs OXNARD to implement a reduction in funding, OXNARD’s Representative may act for OXNARD in implementing and effecting such a reduction and in revising the Agreement for such purpose. Where OXNARD’s Representative has reasonable grounds to question the fiscal accountability, financial soundness, or compliance with this Agreement of SUBRECIPIENT, OXNARD’s Representative may act for OXNARD in suspending the operation of this Agreement for up to sixty (60) days upon three (3) days’ notice to SUBRECIPIENT of OXNARD’s intention to so act, pending an audit or other resolution of such questions. In no event, however, shall any revision made by OXNARD affect expenditures and legally binding commitments made by SUBRECIPIENT before it received notice of such revision, provided that such amounts have been committed in good faith and are otherwise allowable, and that such commitments are consistent with HUD cash withdrawal guidelines.

**2.6 Programs Utilizing Multiple Funding Sources.** SUBRECIPIENT agrees that all funds provided under this Agreement shall be used to benefit OXNARD residents. OXNARD shall not pay for any services provided by SUBRECIPIENT which are funded by other sources.

**2.7 Use of Federal Funds.** SUBRECIPIENT acknowledges and agrees that the Grant is funded from ESG Funds allocated to OXNARD by the United States of America. Accordingly, SUBRECIPIENT hereby provides to OXNARD those covenants set forth in the Covenants Re: Use of Federal Funds.

### **Section 3. Term.**

The term of this Agreement (the “**Term**”) shall commence on **\*\*\*INSERT DATE\*\*\*** and shall terminate on **\*\*\*INSERT DATE\*\*\***, unless earlier terminated pursuant to Section 6 hereof.

This Agreement may be suspended or terminated in accordance with 24 CFR 85.43 if SUBRECIPIENT materially fails to comply with any term of the award, and this Agreement may be terminated for convenience in accordance with 24 CFR 85.44.

### **Section 4. Services.**

**4.1 Scope of Services.** In compliance with all of the terms and conditions of this Agreement, SUBRECIPIENT shall provide the services described in **Exhibit A** attached hereto. SUBRECIPIENT represents and warrants that all Services to be provided hereunder shall be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.

**4.2 Agreement and Provision of Services Nonexclusive.** SUBRECIPIENT acknowledges and agrees that this Agreement and the provision of services hereunder is nonexclusive and that OXNARD may enter into similar agreements with other entities for the provision of similar services. In addition, OXNARD and SUBRECIPIENT hereby agree to and shall coordinate and integrate, to the maximum extent practicable, the Services with the Targeted Homeless Services and the Mainstream Resources.

**4.3 Time for Performance.** Time is of the essence in the performance of this Agreement. SUBRECIPIENT shall perform and complete all Services hereunder in a timely and expeditious manner in accordance with the Scope of Services. Notwithstanding the foregoing, to the extent required by the ESG Regulations, this Agreement shall remain in effect during any period that SUBRECIPIENT has control over ESG Funds, including Program Income.

SUBRECIPIENT shall not be responsible for delays caused by circumstances beyond its reasonable control, provided that SUBRECIPIENT has delivered to OXNARD written notice of the cause of any such delay within ten (10) days of the occurrence of such cause.

**4.4 SUBRECIPIENT’s Application.** The Scope of Services shall include the SUBRECIPIENT’s application for the grant of ESG Funds which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such application and this Agreement, the terms of this Agreement shall govern.

**4.5 Compliance with Governmental Requirements.** SUBRECIPIENT hereby certifies that it (i) has read and reviewed the HEARTH Act, the ESG Regulations, the Written Standards for Providing ESG Assistance, and any statutes, rules, regulations and laws

referenced in the ESG Regulations (for example, the shelter and housing standards set forth at 24 CFR 576.403, the conflict of interest requirements set forth at 24 CFR 576.404, and other Federal requirements set forth at 24 CFR 576.407), (ii) fully understands the same, and (iii) has received or has had the opportunity to receive full legal advice as to its legal rights and responsibilities thereunder. SUBRECIPIENT hereby covenants and agrees to comply with all Governmental Requirements at all times during the term of this Agreement.

**4.6 Licenses, Permits, Fees and Assessments.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the Services required by this Agreement. SUBRECIPIENT shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and which arise from or are necessary for the performance of the Services required by this Agreement. Prior to the provision of the Services, SUBRECIPIENT shall provide OXNARD with copies of any and all licenses, permits, notices, and certificates required by law for the provision of the Services. Within three (3) days of receipt by SUBRECIPIENT, SUBRECIPIENT shall provide OXNARD with copies of any notices, audits, inspections or other documents received by SUBRECIPIENT from any federal, state or local governmental body, arising out of or relating to the provision of the Services.

**4.7 Nondiscrimination.** SUBRECIPIENT agrees not to discriminate against any person or class of persons by reason of sex, color, race, creed, religion, marital status, handicap, ancestry or national origin in its provision of Services. To the extent this Agreement provides that SUBRECIPIENT offer accommodations or services to the public, such accommodations or Services shall be offered by SUBRECIPIENT to the public on fair and reasonable terms.

**4.8 Familiarity with Services.** By executing this Agreement, SUBRECIPIENT represents and warrants that SUBRECIPIENT (i) has thoroughly investigated and considered the Services to be performed, (ii) has carefully considered how the Services should be performed, and (iii) fully understands the requirements, difficulties and restrictions attending the performance of the Services under this Agreement.

**4.9 Prohibition Against Subcontracting and Assignments.** Neither the whole nor any interest in, nor any of the rights or privileges granted under this Agreement shall be assignable or transferable or encumbered in any way without the prior written consent of OXNARD. Any such purported assignment, transfer, encumbrance, pledge, subuse, or permission given without such consent shall be void as to OXNARD. This is a personal services contract and the SUBRECIPIENT was chosen on the basis of characteristics unique to the SUBRECIPIENT. OXNARD shall have the right, in its sole and absolute discretion, to withhold its consent to any such assignment, transfer, encumbrance, pledge, subuse, or permission.

**4.10 Independent Contractor.** SUBRECIPIENT and any agent or employee of SUBRECIPIENT shall act in an independent capacity and not as officers or employees of OXNARD. OXNARD assumes no liability for SUBRECIPIENT's actions and performance, nor assumes responsibility for taxes, bonds, payments, or other commitments, implied, or explicit, by or for SUBRECIPIENT. SUBRECIPIENT shall not have authority to act as an agent on behalf of OXNARD unless specifically authorized to do so in writing. SUBRECIPIENT acknowledges that it is aware that because it is an independent contractor, OXNARD is making no deduction from any amount paid to SUBRECIPIENT and is not

contributing to any fund on its behalf. SUBRECIPIENT disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

SUBRECIPIENT represents that SUBRECIPIENT has or will secure and maintain, at SUBRECIPIENT's sole cost and expense, all qualified and licensed personnel required to perform the Services. Staff and any additional personnel hired by SUBRECIPIENT shall be employees of SUBRECIPIENT. Such personnel shall not be deemed to be employees of OXNARD or to have any contractual relationship with OXNARD. Such personnel shall be authorized or permitted under state and local law to perform the Services.

**4.11 Inspection.** OXNARD and its agents and representatives shall have the right at any reasonable time to observe the provision of the Services. OXNARD is under no duty to supervise the provision of the Services. Any inspection or examination by OXNARD is for the sole purpose of protecting and preserving OXNARD's rights under this Agreement. No default of SUBRECIPIENT shall be waived by any inspection by OXNARD. In no event shall any inspection by OXNARD be a representation that there has been or will be compliance with this Agreement or that SUBRECIPIENT or its Staff is in compliance with any Federal, state and local laws, ordinances, regulations and directives applicable to the performance of this Agreement or the provision of the Services. SUBRECIPIENT shall make or cause to be made such other independent inspections as SUBRECIPIENT may desire for SUBRECIPIENT's own protection.

**4.12 Nepotism.** SUBRECIPIENT shall not hire or permit the hiring of any person to fill a position funded through this Agreement if a member of the person's immediate family is employed in an administrative capacity by OXNARD's ESG Program or any department of OXNARD which is administering the ESG Program. For the purposes of this section, the term "immediate family" means spouse, child, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, stepparent and stepchild. The term "administrative capacity" means having selection, hiring, supervisory or management responsibilities, including serving on the governing body of SUBRECIPIENT.

## **Section 5. Insurance and Indemnification.**

### **5.1 Insurance.**

**5.1.1** SUBRECIPIENT shall obtain and maintain during the performance of the Program under this Agreement the insurance coverages as specified in **Exhibit INS-[redacted]**, attached hereto and incorporated herein by this reference, issued by a company satisfactory to OXNARD's Risk Manager, unless the Risk Manager waives, in writing, the requirement that SUBRECIPIENT obtain and maintain such insurance coverages.

**5.1.2** SUBRECIPIENT shall, prior to performance of the Services, file with the Risk Manager evidence of insurance coverage as specified in **Exhibit INS-[redacted]**. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in **Exhibit INS-[redacted]**.

**5.1.3** Maintenance of proper insurance coverages by SUBRECIPIENT is a material element of this Agreement. SUBRECIPIENT's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

## 5.2 Indemnification.

**5.2.1** To the fullest extent permitted by law, SUBRECIPIENT shall (1) immediately defend; (2) indemnify; and (3) hold harmless OXNARD, its City Council, each member thereof, and its directors, officers, and employees (the “**Indemnified Party**”) from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with SUBRECIPIENT’s performance of this Agreement or SUBRECIPIENT’s failure to comply with any of its obligations contained in this Agreement. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys’ fees; court costs; and costs of alternative dispute resolution. SUBRECIPIENT’s obligation to indemnify applies unless it is adjudicated that any of the liabilities covered by this Section are the result of the sole active negligence or sole willful misconduct of the Indemnified Party.

**5.2.2** The duty to defend is a separate and distinct obligation from SUBRECIPIENT’s duty to indemnify. SUBRECIPIENT shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Indemnified Party immediately upon tender to SUBRECIPIENT of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of negligence or willful misconduct by the Indemnified Party shall not relieve SUBRECIPIENT from its separate and distinct obligation to defend the Indemnified Party. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if SUBRECIPIENT asserts that liability is caused in whole or in part by the negligence or willful misconduct of the Indemnified Party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of the Indemnified Party, SUBRECIPIENT may submit a claim to OXNARD for reimbursement of reasonable attorneys’ fees and defense costs.

**5.2.3** The review, acceptance or approval of SUBRECIPIENT’s work or work product by the Indemnified Party shall not affect, relieve or reduce SUBRECIPIENT’s indemnification or defense obligations. This Section shall survive completion of the Services or termination of this Agreement. The provisions of this Section shall not be restricted by and do not affect the provisions of this Agreement relating to insurance.

## Section 6. Enforcement of Agreement; Termination of Agreement.

**6.1 Events of Default.** For purposes of this Section 6, the word “Default” shall mean the failure of SUBRECIPIENT to perform any of SUBRECIPIENT’s duties or obligations or the breach by SUBRECIPIENT of any of the terms and conditions set forth in this Agreement. In addition, SUBRECIPIENT shall be deemed to be in Default upon SUBRECIPIENT’s (i) application for, consent to, or suffering of, the appointment of a receiver, trustee or liquidator for all or a substantial portion of its assets, (ii) making a general assignment for the benefit of creditors, (iii) being adjudged bankrupt, (iv) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or

insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing), or (v) suffering or permitting to continue un stayed and in effect for fifteen (15) consecutive days any attachment, levy, execution or seizure of all or a substantial portion of SUBRECIPIENT's assets or of SUBRECIPIENT's interests hereunder.

OXNARD shall not be deemed to be in Default in the performance of any obligation required to be performed by OXNARD hereunder unless and until OXNARD has failed to perform such obligation for a period of thirty (30) days after receipt of written notice from SUBRECIPIENT specifying in reasonable detail the nature and extent of any such failure; provided, however, that if the nature of OXNARD's obligation is such that more than thirty (30) days are required for its performance, then OXNARD shall not be deemed to be in Default if OXNARD shall commence to cure such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

**6.2 Institution of Legal Actions.** In addition to any other rights and remedies, and subject to the restrictions otherwise set forth in this Agreement, either Party may institute an action at law or in equity to seek the specific performance of the terms of this Agreement, to cure, correct or remedy any Default, to recover damages for any Default or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Ventura, State of California or in the United States District Court for the Central District of California.

**6.3 Acceptance of Service of Process.** In the event that any legal action is commenced by the SUBRECIPIENT against OXNARD, service of process on OXNARD shall be made by personal service upon the Director or in such other manner as may be provided by law. In the event that any legal action is commenced by OXNARD against the SUBRECIPIENT, service of process on the SUBRECIPIENT shall be made by personal service upon SUBRECIPIENT's Representative or in such other manner as may be provided by law.

**6.4 Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

**6.5 Inaction Not a Waiver of Default.** Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**6.6 Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**6.7 Attorneys' Fees.** OXNARD and SUBRECIPIENT agree that in the event of litigation to enforce this Agreement or terms, provisions and conditions contained herein, to terminate this Agreement, or to collect damages for a Default hereunder, the prevailing party shall be entitled to all costs and expenses, including reasonable attorneys' fees, incurred in connection with such litigation.

**6.8 Immediate Termination for SUBRECIPIENT's Default.** In the event of any Default by SUBRECIPIENT, OXNARD may immediately terminate this Agreement. Such termination shall be effective immediately upon receipt by SUBRECIPIENT of written notice from OXNARD. In such event, SUBRECIPIENT shall have no further rights hereunder; OXNARD shall have all other rights and remedies as provided by law.

**6.9 Termination Without Cause.** OXNARD may terminate this Agreement at any time without the necessity of cause or Default by SUBRECIPIENT by giving ten (10) days' notice in writing to SUBRECIPIENT. In such event, SUBRECIPIENT shall have no further rights hereunder, except that SUBRECIPIENT shall be paid for all Services rendered prior to receipt of notice of such termination.

## **Section 7. Documents and Data.**

**7.1 Data to be Furnished by OXNARD.** OXNARD shall furnish to SUBRECIPIENT such documents and materials pertinent to the provision of Services hereunder as OXNARD may possess or acquire.

**7.2 Ownership of Documents.** All documents and materials furnished by OXNARD to SUBRECIPIENT pursuant to Section 7.1 hereof shall remain the property of OXNARD and shall be returned to OXNARD upon termination of this Agreement. All documents and materials prepared by SUBRECIPIENT hereunder shall become the property of OXNARD at the time of payment to SUBRECIPIENT of all fees, if any, for their preparation, and shall be delivered to OXNARD by SUBRECIPIENT at the request of OXNARD. The documents and materials prepared by SUBRECIPIENT hereunder shall not be used by OXNARD or others, except for the purpose for which they were intended. OXNARD agrees not to associate SUBRECIPIENT's name with any documents or materials not prepared by SUBRECIPIENT.

## **Section 8. Audit of Records.**

SUBRECIPIENT shall keep such books and records as shall be necessary to perform the services required by this Agreement and to enable OXNARD to evaluate the cost and the performance of such services. Books and records shall be kept and prepared in accordance with generally accepted accounting principles.

OXNARD shall have the right to audit SUBRECIPIENT's records pertaining to this Agreement and the services to be performed hereunder at SUBRECIPIENT's office location as set forth in Section 9.2 hereof. SUBRECIPIENT agrees to make available all pertinent records for the purpose of conducting such an audit at that location, during normal business hours.

## **Section 9. Miscellaneous Provisions.**

**9.1 Waiver.** Inaction by OXNARD or SUBRECIPIENT with respect to a Default hereunder shall not be deemed to be a waiver of such Default. The waiver by either OXNARD or SUBRECIPIENT of any Default hereunder shall not be deemed to be a waiver of any subsequent Default.

**9.2 Notices.** All notices, demands or other writings to be made, given or sent hereunder, or which may be so given or made or sent by either OXNARD or SUBRECIPIENT to the other shall be deemed to have been given when in writing and personally delivered or if mailed on the third (3rd) day after being deposited in the United States mail, certified or registered, postage prepaid, and addressed to the respective Parties at the following addresses:

If to OXNARD: Norma J. Owens, Grants Manager  
City of Oxnard  
Housing Department  
Grants Management Division  
435 South "D" Street  
Oxnard, California 93030

With copies to: Rahsaan J. Tilford, Assistant City Attorney  
City of Oxnard  
Office of the City Attorney  
300 West Third Street, Suite 300  
Oxnard, California 93030

If to SUBRECIPIENT: **\*\*\*INSERT NAME, TITLE\*\*\***  
**\*\*\*INSERT ADDRESS\*\*\***  
**\*\*\*INSERT CITY, POSTAL CODE, STATE\*\*\***

**9.3 Relationship of Parties.** Nothing contained herein shall be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that SUBRECIPIENT is and will be at all times an independent contractor pursuant to this Agreement and shall not, in any way, be considered to be an officer, agent or employee of OXNARD.

**9.4 Time of the Essence.** Time is hereby expressly declared to be the essence of this Agreement and of each and every term, covenant and condition hereof which relates to a date or a period of time.

**9.5 Remedies Cumulative.** The remedies given to OXNARD and SUBRECIPIENT herein shall be cumulative and are given without impairing any other rights given OXNARD or SUBRECIPIENT by statute or law now existing or hereafter enacted and the exercise on any one (1) remedy by OXNARD or SUBRECIPIENT shall not exclude the exercise of any other remedy.

**9.6 Effect of Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of its terms and provisions to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**9.7 Successors and Assigns.** This Agreement and the covenants and conditions contained herein shall be binding upon and inure to the benefit of and shall apply to the successors and assigns of OXNARD and to the permitted successors and assigns of SUBRECIPIENT,

and all references to the “OXNARD” or “SUBRECIPIENT” shall be deemed to refer to and include all permitted successors and assigns of such Party.

**9.8 Entire Agreement.** This Agreement and the exhibits hereto contain the entire agreement of OXNARD and the SUBRECIPIENT with respect to the matters covered hereby, and no agreement, statement or promise made by any of the Parties which is not contained herein, shall be valid or binding. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended, modified or added except by an agreement in writing signed by OXNARD and SUBRECIPIENT.

**9.9 Authority.** Each individual executing this Agreement on behalf of a corporation, nonprofit corporation, partnership or other entity or organization, represents and warrants the he or she is duly authorized to execute and deliver this Agreement on behalf of such entity or organization and that this Agreement is binding upon the same in accordance with its terms. SUBRECIPIENT shall, at OXNARD’s request, deliver a certified copy of it governing board’s resolution or certificate authorizing or evidencing such execution.

**9.10 Conflicts of Interest.** No member, official or employee of OXNARD shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affect his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

**9.11 Time for Acceptance of Agreement by OXNARD.** This Agreement, when executed by SUBRECIPIENT and delivered to OXNARD, must be authorized, executed and delivered by OXNARD on or before forty-five (45) days after the execution and delivery by SUBRECIPIENT or this Agreement shall be void, except to the extent that SUBRECIPIENT and OXNARD shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

**9.12 Non-Liability of Members, Officials and Employees of OXNARD.** No member, official or employee of OXNARD shall be personally liable to SUBRECIPIENT, or any successor in interest, in the event of any Default or breach by OXNARD or for any amount which may become due to SUBRECIPIENT or SUBRECIPIENT’s successors, or on any obligation under the terms of this Agreement. SUBRECIPIENT hereby waives and releases any claim SUBRECIPIENT may have against the members, officials or employees of OXNARD with respect to any Default or breach by OXNARD or for any amount which may become due to SUBRECIPIENT or SUBRECIPIENT’s successors, or any obligations under the terms of this Agreement. SUBRECIPIENT makes such release with the full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED

HIS OR HER SETTLEMENT WITH THE DEBTOR.”

**9.13 Controlling Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**9.14 Effective Date.** Provided that OXNARD has determined in its sole discretion that SUBRECIPIENT has complied with all prerequisites to this Agreement, this Agreement shall be effective on **\*\*\*INSERT DATE FROM INTRODUCTORY PARAGRAPH\*\*\***, such date shall be the “Effective Date”.

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE RESPECTIVE DATES SET FORTH BELOW.**

**CITY**

**SUBRECIPIENT**

\_\_\_\_\_  
Greg Nyhoff, City Manager

\_\_\_\_\_  
**\*\*\*INSERT NAME\*\*\***

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**\*\*\*INSERT NAME\*\*\***

\_\_\_\_\_  
Stephen M. Fischer, Interim City Attorney

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Norma J. Owens, Grants Manager

\_\_\_\_\_  
Date:

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**EXHIBIT "B"**

**BUDGET**

(Behind this sheet)

**EXHIBIT “C”**

**COVENANTS RE: USE OF FEDERAL FUNDS**

SUBRECIPIENT acknowledges and agrees that the Grant is funded from ESG Funds allocated to OXNARD by HUD on behalf of the United States of America. Accordingly, SUBRECIPIENT covenants and agrees as follows:

**Section 1. Compliance With ESG Regulations.** SUBRECIPIENT hereby covenants and agrees that it will comply with the ESG Regulations, including, but not limited to, the following ESG Program requirements:

- (a) Work with OXNARD to coordinate and integrate, to the maximum extent practicable, its Scope of Services with Targeted Homeless Programs (See 24 CFR 576.400(b)) and Mainstream Resources (See 24 CFR 576.400(c));
- (b) Work with OXNARD and the Continuum of Care to ensure the screening, assessment and referral of Program Participants is consistent with the Written Standards for Providing ESG Assistance (See 24 CFR 576.400(d));
- (c) Work with OXNARD to ensure that data on all persons served and all activities assisted under the ESG Program are entered into the HMIS in accordance with HUD’s standards on participation, data collection, and reporting (See 24 CFR 576.400(f));
- (d) Conduct an initial evaluation to determine the eligibility of each individual or family’s eligibility for ESG assistance and the amount and types of assistance the individual or family needs to regain stability in permanent housing (See 24 CFR 576.401(a));
- (e) Re-evaluate the program participant’s eligibility and the types and amounts of assistance the program participant needs not less than once every three (3) months for Program Participants receiving homelessness prevention assistance, and not less than once annually for Program Participants receiving rapid re-housing assistance in accordance with 24 CFR 576.401(b));
- (f) Assist each program participant, as needed, to obtain the mainstream and other resources described in 24 CFR 576.401(d)); and
- (g) While providing homelessness prevention or rapid re-housing assistance to a program participant, provide housing stability case management in accordance with 24 CFR 576.401(e)).

**Section 2. Civil Rights Act.** SUBRECIPIENT shall comply with the Civil Rights Act of 1964, as amended, and all regulations applicable thereto.

**Section 3. Training and Employment Opportunities; Section 3 Requirements.** SUBRECIPIENT acknowledges that the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u and the regulations issued pursuant thereto

by the U.S. Secretary of Housing and Urban Development as set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement (“Section 3”) are applicable to any work of conversion, major rehabilitation, or other renovation for which ESG Funds are used by SUBRECIPIENT under this Agreement. Section 3 requires, that to the greatest extent feasible, opportunities for training and employment be given to lower income residents and that contracts for any work of conversion, major rehabilitation, or other renovation be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the project; provided, however, that the ESG Regulations and, specifically, 24 CFR 576.405(c) and 24 CFR 576.407(a) require SUBRECIPIENT to involve homeless individuals and families, to the maximum extent practicable and as a priority over other Section 3 residents, in constructing, renovating, maintaining and operating facilities assisted under the ESG Program, in providing services for occupants of facilities assisted under the ESG Program, and in providing services for occupants of facilities assisted under the ESG Program, which involvement may include employment or volunteer services. SUBRECIPIENT shall comply with the provisions of Section 3 and, to the maximum extent practicable, the provisions of 24 CFR 576.405(c) and 24 CFR 576.407(a).

**3.1 Notice to Labor Organizations.** For any work of conversion, major rehabilitation, or other renovation undertaken by SUBRECIPIENT pursuant to this Agreement, SUBRECIPIENT shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising such labor organization or workers’ representative of its commitments under the Section 3 clause (set forth in Section 3.2 of this Exhibit), as modified, amended and supplemented by the provisions of 24 CFR 576.405(c) and 24 CFR 576.407(a), and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

**3.2 Include in Subcontracts.** SUBRECIPIENT shall include a Section 3 clause in every subcontract for any work of conversion, major rehabilitation, or other renovation undertaken by SUBRECIPIENT pursuant to this Agreement, and shall, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. SUBRECIPIENT shall not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and shall not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of said regulations.

**3.3 Sanctions.** Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, the provisions of 24 CFR 576.405(c) and 24 CFR 576.407(a), and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement shall be a condition of the federal financial assistance provided for any work of conversion, major rehabilitation, or other renovation undertaken by SUBRECIPIENT pursuant to this Agreement, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject SUBRECIPIENT, its subcontractors, its successors, and assigns to those sanctions as are specified by 24 CFR Part 135.

**Section 4. Conflicts of Interest.** SUBRECIPIENT and all contractors of SUBRECIPIENT must comply with the requirements of 24 CFR 576.404.

**Section 5. Certification Regarding Lobbying.** SUBRECIPIENT certifies, to the best of its knowledge and belief, that:

- (a) 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 any 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.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, SUBRECIPIENT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) SUBRECIPIENT shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements), and that all SUBRECIPIENT's shall certify and disclose accordingly.

**Section 6. Drug Free Workplace.**

**6.1 Certification.** SUBRECIPIENT hereby certifies to OXNARD that SUBRECIPIENT will provide a drug-free workplace by:

- (a) publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in SUBRECIPIENT'S workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (b) establishing a drug-free awareness program to inform employees about:
  - (i) the dangers of drug abuse in the workplace;
  - (ii) SUBRECIPIENT's policy of maintaining a drug-free workplace;
  - (iii) any available drug counseling, rehabilitation, and employee assistance program; and
  - (iv) the penalties that may be imposed upon employees for drug abuse violations;
- (c) making it a requirement that each employee to be engaged in the performance of Services under this Agreement be given a copy of the statement required by subparagraph (a);

- (d) notifying the employee in the statement required by subparagraph (a), that as a condition of employment, the employee will:
  - (i) abide by the terms of this statement; and
  - (ii) notify SUBRECIPIENT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- (e) notifying OXNARD within ten (10) days after receiving notice of a conviction under subparagraph (d)(ii) from an employee or otherwise receiving actual notice of such conviction;
- (f) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by 41 U.S.C. 703; and
- (g) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (a), (b), (c), (d), (e), and (f).

**6.2. Suspension.** SUBRECIPIENT acknowledges and agrees that this Agreement shall be subject to suspension of payment or termination, or both, and SUBRECIPIENT shall be subject to suspension or debarment if the Director of OXNARD or his official designee determines, in writing, that:

- (a) SUBRECIPIENT has made false certification under Section 8.1;
- (b) SUBRECIPIENT violates such certification by failing to carry out the requirements of subparagraphs (a), (b), (c), (d), (e), (f) or (g) of Section 8.1; or
- (c) such a number of SUBRECIPIENT's employees have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that SUBRECIPIENT has failed to make a good faith effort to provide a drug-free workplace as required by Section 8.

**Section 7. Use of Debarred, Suspended or Ineligible Contractors.** SUBRECIPIENTS shall comply with the provisions of 24 CFR Part 24 relating to the prohibition on employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

**Section 8. Matching Funds.** SUBRECIPIENT shall provide matching supplemental funds required by 24 CFR 576.201 and as described in the Scope of Services.

**Section 9. Reversion of Assets.** Upon the expiration or termination of this Agreement, SUBRECIPIENT shall transfer to OXNARD any ESG Funds on hand and any accounts receivable attributable to the use of ESG Funds.

**Section 10. Program Income.** Program Income shall have the meaning provided in Exhibit D to this Agreement.

**Section 11. No Disability.** SUBRECIPIENT certifies and agrees that it is under no contractual or other disability which would prevent it from complying with all pertinent laws and regulations.

**Section 12. Patents and Copyrights.** SUBRECIPIENT acknowledges and agrees that HUD reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- (a) The copyright in any work developed under the Grant or this Agreement;
- (b) Any rights of copyright to which SUBRECIPIENT purchases ownership with Grant Proceeds;
- (c) The patent for any invention developed under the Grant or this Agreement; and
- (d) Any rights in any patent to which SUBRECIPIENT purchases ownership with Grant Proceeds.

**Section 13. Records, Reporting and Monitoring.**

**13.1 Records and Reports.** In addition to the recordkeeping and reporting requirements set forth in 24 CFR 576.500, SUBRECIPIENT hereby agrees to and shall prepare and submit financial, ESG Program progress, monitoring, evaluation, personnel, property and financial records and other reports as required by OXNARD and in the format acceptable to OXNARD to assure proper accounting of all Federal and non-Federal project funds. SUBRECIPIENT shall furnish such information which, in the judgment of OXNARD's Representative, may be relevant to questions of compliance with contractual conditions hereunder or granting agency directives, or with the effectiveness, legality and goals of the program. SUBRECIPIENT will establish a record keeping system which is consistent with 24 CFR 570.506 and 570.507. Such records shall be maintained and available to OXNARD for at least three (3) years following the completion of the program.

SUBRECIPIENT will submit quarterly reports to OXNARD specifying Program Income earned. Each report shall contain, or be accompanied by, an itemized statement showing all information required by OXNARD, including, without limitation:

- The amount expended or incurred by SUBRECIPIENT and due and payable for the Services for such reporting quarter.
- The revenue generated by SUBRECIPIENT and the source of such revenue for each reporting quarter.
- A statement showing for each reporting quarter: (i) a description of each of the Program Participants serviced, (ii) the number of the Program Participants receiving shelter at the Shelters, (iii) the type of counseling session conducted, the number of each type of counseling sessions conducted, and the number of the Program Participants attending each such counseling session, (iv) the type of educational sessions conducted, the number of each type of educational session conducted, and the number of the Program Participants attending each such educational session, and (v) a quarterly narrative which specifies any additional services provided.

The quarterly report for the last quarter of the fiscal year of the Term of the Agreement ending June 30 shall also include SUBRECIPIENT's financial statement for the immediately preceding year, accompanied by an annual audit report of SUBRECIPIENT's financial statement for the immediately preceding year.

Each report shall be certified as complete and correct by the executive director of SUBRECIPIENT.

**13.2 Monitoring.** OXNARD will conduct periodic program monitoring reviews of the documentation, reports and records specified under 24 CFR 576.500. These reviews will focus on the extent to which the planned program has been implemented and measurable goals achieved, effectiveness of program management, impact of the program, and compliance with the recordkeeping and reporting requirements of 24 CFR 576.500. Authorized representatives of OXNARD and HUD shall have the right of access to all activities and facilities operated by SUBRECIPIENT under this Agreement. Facilities include all files, records, and other documents related to the performance of this Agreement. Activities include attendance at staff, board of directors, advisory committee, and advisory board meetings and inspection by OXNARD and HUD representatives. SUBRECIPIENT shall ensure that its employees and board members furnish such information as, in the judgment of OXNARD and HUD representatives, may be relevant to the question of compliance with contractual conditions and HUD directives, or the effectiveness, legality, and achievements of the program.

**13.3 Accounting.** SUBRECIPIENT shall establish, and maintain on a current basis, an adequate accrual and accounting system in accordance with generally accepted accounting principles and standards.

**13.4 Audits.** SUBRECIPIENT is required to arrange for an independent financial and compliance audit annually for each fiscal year Federal funds are received under this Agreement. Audits must be in compliance with O.M.B. Circular No. A-133. An audit may be conducted by Federal, State, or local funding source agencies as part of OXNARD's audit responsibilities. The results of the independent audit must be submitted to OXNARD within thirty (30) days of completion. Within thirty (30) days of the submittal of said audit report, SUBRECIPIENT shall provide a written response to all conditions of findings reported in said audit report. The response must examine each condition or finding and explain a proposed resolution, including a schedule for correcting any deficiency. All conditions or finding corrective actions shall take place within six (6) months after receipt of the audit report. OXNARD and its authorized representatives shall at all times have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of SUBRECIPIENT. SUBRECIPIENT staff will cooperate fully with authorized auditors when they conduct audits and examinations of SUBRECIPIENT's program.

If indications of misappropriation or misapplication of the funds granted under this Agreement cause OXNARD to require a special audit, the cost of the audit will be encumbered and deducted from the Grant. Should OXNARD subsequently determine that the special audit was not warranted, the amount encumbered will be restored to the Grant. Should the special audit confirm misappropriation or misapplication of funds, SUBRECIPIENT shall promptly reimburse OXNARD the amount of misappropriation or misapplication. In the event OXNARD uses the judicial system to recover misappropriated or misapplied funds, SUBRECIPIENT shall reimburse OXNARD for legal fees and court

costs incurred in obtaining the recovery.

SUBRECIPIENT agrees that in the event the program established hereunder is subjected to audit exceptions by appropriate federal audit agencies, it shall be responsible for complying with such exceptions and paying OXNARD the full amount of OXNARD's liability to the funding agency resulting from such audit exceptions.

**13.5 Confidentiality of Records.** SUBRECIPIENT shall adhere to the requirements of 24 CFR 576.500(x) and any written procedures developed by OXNARD and provided to SUBRECIPIENT from time to time during the Term of the Agreement.

**Section 14. Property Acquisition During Term.**

**14.1 Non-Expendable Property.** A record shall be maintained by SUBRECIPIENT for each item of non-expendable property acquired for this program with Grant Proceeds. This record shall be provided to OXNARD as well as being available for inspection and audit upon the request of OXNARD. Non-expendable property means tangible personal property having a useful life of more than one (1) year and an acquisition cost of Three Hundred Dollars (\$300.00) or more per unit. SUBRECIPIENT shall not purchase or agree to purchase non-expendable property without the prior written approval of OXNARD. Upon completion or early termination of this Agreement, OXNARD reserves the right to determine the final disposition of such non-expendable property in compliance with applicable laws and regulations. Such disposition may include, but is not limited to, OXNARD taking possession of such non-expendable property.

**14.2 Expendable Property.** Expendable property refers to all tangible personal property other than non-expendable personal property. SUBRECIPIENT shall not purchase or agree to purchase expendable personal property at a cost of Three Hundred Dollars (\$300.00) or more per unit without the prior written approval of OXNARD.

**14.3 Purchase or Lease of Non-Expendable Property or Equipment.** SUBRECIPIENT shall obtain three documented bids prior to purchasing or leasing any non-expendable property or equipment over Three Hundred Dollars (\$300.00) in unit value. SUBRECIPIENT shall purchase or lease from the lowest responsive and responsible bidder. All equipment that has a purchase or lease price of over Fifty Dollars (\$50.00) in unit-value and life expectancy of more than one (1) year shall be properly identified and inventoried and shall be charged at its actual price. Such inventory shall be provided to OXNARD as well as being available for inspection and audit upon the request of OXNARD.

**Section 15. Travel and Conference Restrictions.** SUBRECIPIENT covenants and agrees that travel and conference expenses will not be paid for by funds provided through this Agreement.

**Section 16. Privacy.** In addition to the requirements set forth in the ESG Regulations, SUBRECIPIENT agrees and shall ensure that no information about or obtained from any person receiving services hereunder shall be voluntarily disclosed in any form identifiable with such person without first obtaining the written consent of such person.

## **EXHIBIT “D”**

### **DEFINITION OF PROGRAM INCOME**

(a) General. SUBRECIPIENT is encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with ESG Funds, from the sale of commodities or items fabricated under this Agreement, and from payments of principal and interest on loans made with ESG Funds. Except as otherwise provided in regulations of HUD, program income does not include interest on ESG Funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of this Agreement during the grant period. During the grant period is the time between the effective date of the award and the ending date of the award reflected in the final financial report. Program income includes any amount of a security or utility deposit returned to SUBRECIPIENT.

(c) Cost of generating program income. If authorized by Federal regulations or this Agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by SUBRECIPIENT are not program income unless the revenues are specifically identified in this Agreement or Federal agency regulations as program income.

(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by SUBRECIPIENT is program income only if the revenues are specifically identified in this Agreement or Federal agency regulations as program income. (See 24 CFR § 85.34.)

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of 24 CFR §§ 85.31 and 85.32.

(g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or this Agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by OXNARD and income earned by SUBRECIPIENT and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g)(2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to this Agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of this Agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of this Agreement. The amount of the Federal grant award remains the same.

(h) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.