

MODEL CONTRACT
BETWEEN
COUNTY OF ORANGE
AND
“SUBRECIPIENT”
FOR
PUBLIC SERVICES

<u>CFDA#</u>	<u>FAIN #</u>	<u>PROGRAM/SERVICE TITLE</u>	<u>FUNDING AGENCY</u>
14.231	Pending	Emergency Solutions Grant (ESG)	Department of Housing and Urban Development (HUD)



MODEL CONTRACT

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This Agreement, _____ hereinafter referred to as "CONTRACT" is made between the County of Orange, a political subdivision of the State of California and recognized Urban County under the Federal Housing and Community Development Act of 1974 (Public Law 93-383), as amended, with a place of business at 1770 North Broadway, Santa Ana, CA 92706-2642; hereinafter referred to as "COUNTY," and _____, a _____, in the State of California, DUNS Number _____, with a place of business at _____, hereinafter referred to as "SUBRECIPIENT," with COUNTY and SUBRECIPIENT sometimes referred to as "PARTY", or collectively as "PARTIES."

RECITALS

This CONTRACT is made with reference to the following facts, among others:

WHEREAS, SUBRECIPIENT responded to a FY 2016-17 State HCD Emergency Solutions Grant RFP for emergency services and/or rapid rehousing activities within Orange County; and

WHEREAS, the SUBRECIPIENT represented that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, COUNTY approved an allocation of an amount not to exceed \$____.00 (____ Dollars and 00 Cents) in Program funding to SUBRECIPIENT to carry out certain program services and activities for the Fiscal Years 2016-17 and 2017-18; and

WHEREAS, COUNTY engages SUBRECIPIENT to assist COUNTY in utilizing aforesaid funds:

NOW, THEREFORE, the PARTIES mutually agree as follows:

Contract Definitions

For the purposes of this CONTRACT the following definitions shall apply:

1. HUD: United States Department of Housing and Urban Development.
2. OC COMMUNITY RESOURCES (OCCR): Designated as the Lead for the development and implementation of County of Orange Urban County Program's Consolidated Plan.
3. DIRECTOR: DIRECTOR of OC Community Resources, or designee.
4. PROGRAM INCOME: The gross income received by SUBRECIPIENT directly generated from the use of the subject program funds.
5. GRANTEE PERFORMANCE REPORT (GPR) INFORMATION FORM: A PROGRAM activity data document provided by COUNTY to SUBRECIPIENT used to monitor and track the performance of SUBRECIPIENT.
6. OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY: A COUNTY document setting policies regarding types of documentation required to support the costs incurred and paid (including but not limited to copies of paid invoices, certified payroll registers, bank statements, etc.)
7. PROJECT: Any site or sites, including buildings, and/or activities assisted with federal program funds.
8. OMB: Federal Office of Management and Budget.
9. CAPER: Consolidated Annual Performance and Evaluation Report. An annual published report to HUD and the public on all housing-related activities.
10. CONTINUUM OF CARE: An Orange County group composed of representatives of relevant organizations that serve homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of services to address the various needs of homeless persons and persons at risk of homelessness.
11. HOMELESS MANAGEMENT INFORMATION SYSTEM (HMIS): 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. (24 CFR Part 580)
12. EQUIPMENT: Tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
13. PROGRAM ADMINISTRATION: An activity relating to the general management, oversight and coordination of community development programs. Costs directly related to carrying out eligible activities are not included.
14. DUNS Number: A unique, 9-digit identifier issued and maintained by the Dun & Bradstreet (D&B) that verifies the existence of a business entity. The DUNS number is

needed to coordinate with the System for Award Management (SAM) that combines federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. <https://www.SAM.gov>

15. Emergency Solution Grants (ESG): The County of Orange receives these funds due to its entitlement status as an Urban County. The appropriation amount is determined by a statutory formula developed by HUD. ESG (CDFA-14.231) funds may be used for eligible activities such as: essential services related to emergency shelter, rehabilitation and conversion of buildings to be used as emergency shelters, operation of emergency shelters, and homeless prevention services. "ESG" is the acronym for the Emergency Solutions Grants program.
16. Matching Requirement: 24 CFR 576.201: The SUBRECIPIENT must make matching contributions to supplement the SUBRECIPIENT'S ESG program in an amount that equals the SUBRECIPIENT's fiscal year grant for ESG program, including any SUBRECIPIENT's ESG project. To be recognized as match for ESG, each contribution must meet the requirements under 2 CFR 200.306.

Terms and Conditions:**1. Scope of Services:**

This CONTRACT specifies the Contractual terms and conditions by which the COUNTY will procure services from SUBRECIPIENT as further detailed in the Scope of Services, identified and incorporated herein by this reference as "Attachment A".

2. Term of CONTRACT:

This CONTRACT shall be effective from _____, 2016 through _____, 2018, unless otherwise terminated by the COUNTY.

A. Eligible costs related to services provided by SUBRECIPIENT must be incurred during the period beginning _____. The Project shall be completed and all funds provided through this CONTRACT shall be expended on eligible Project activities through and including _____.

3. Contingency of Funds:

SUBRECIPIENT acknowledges that funding or portions of funding for this CONTRACT may also be contingent upon the receipt of funds from, and/or appropriation of funds by Federal, State of California or local Government funds to COUNTY. If such funding and/or appropriations are not forthcoming, or are otherwise limited, COUNTY may immediately terminate or modify this CONTRACT without penalty.

A. If funding levels are significantly affected by Federal budget and funds are not allocated and available for the continuance of the function performed by SUBRECIPIENT, the CONTRACT may be terminated by the COUNTY at the end of the period for which funds are available. The COUNTY shall notify SUBRECIPIENT at the earliest possible time of any service, which will or may be affected by a shortage of funds. No penalty shall accrue to the COUNTY in the event this provision is exercised and the COUNTY shall not be obligated nor liable for any damages as a result of termination under this provision of this CONTRACT, and nothing herein shall be construed as obligating the COUNTY to expend or as involving the COUNTY in any CONTRACT or other obligation for future payment of money in excess of appropriations authorized by law.

4. Fiscal Appropriations:

Intentionally left blank.

5. Adjustments –Scope of Services:

No adjustments made to the Scope of Services will be authorized without prior written approval of the COUNTY assigned Purchasing Agent.

6. Changes/Extra Work:

The SUBRECIPIENT shall make no changes to this CONTRACT without the COUNTY's written consent. In the event that there are new or unforeseen requirements, the COUNTY with the SUBRECIPIENT's concurrence has the discretion to request official changes at any time without changing the intent of this CONTRACT.

If COUNTY-initiated changes or changes in laws or government regulations affect price, the SUBRECIPIENT's ability to deliver services, or the program schedule, the SUBRECIPIENT shall give the COUNTY written notice no later than seven calendar days from the date the law or

regulation went into effect or the date the change was proposed by the COUNTY and the SUBRECIPIENT was notified of the change. Such changes shall be agreed to in writing and incorporated into a CONTRACT Amendment; said Amendment shall be issued by the COUNTY-assigned Purchasing Agent, shall require the mutual consent of all PARTIES, and may prohibit the SUBRECIPIENT from proceeding with the work as set forth in this CONTRACT.

7. Breach of CONTRACT:

The failure of the SUBRECIPIENT to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event the COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT:

Terminate the CONTRACT immediately, pursuant to Paragraph K and Paragraphs 23 through 25 herein;

Afford the SUBRECIPIENT written notice of the breach and ten calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;

Discontinue payment to the SUBRECIPIENT for and during the period in which the SUBRECIPIENT is in breach; and

Offset against any monies billed by the SUBRECIPIENT but yet unpaid by the COUNTY those monies disallowed pursuant to the above.

8. Conditions Affecting Work:

The SUBRECIPIENT shall be responsible for taking all steps reasonably necessary, to ascertain the nature and location of the work to be performed under this CONTRACT; and to know the general conditions which can affect the work or the cost thereof. Any failure by the SUBRECIPIENT to do so will not relieve SUBRECIPIENT from responsibility for successfully performing the work without additional cost to the COUNTY. The COUNTY assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this CONTRACT, unless such understanding or representations by the COUNTY are expressly stated in the CONTRACT.

9. Conflict of Interest – SUBRECIPIENT’s Personnel:

The SUBRECIPIENT shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the SUBRECIPIENT; the SUBRECIPIENT’s employees, agents, and relatives; sub-tier SUBRECIPIENTs; and third Parties associated with accomplishing work and services hereunder. The SUBRECIPIENT’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

SUBRECIPIENT agrees to abide by the provisions of 24 CFR 576 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this CONTRACT.

SUBRECIPIENT further covenants that in the performance of this CONTRACT no person having such a financial interest shall be employed or retained by SUBRECIPIENT hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer,

or elected official or appointed official of COUNTY or SUBRECIPIENT, or any designated public agencies which are receiving funds under the CDBG Entitlement Program.

10. Conflict of Interest – COUNTY Personnel:

The County of Orange Board of Supervisors' policy prohibits its employees from engaging in activities involving a conflict of interest. The SUBRECIPIENT shall not, during the period of this CONTRACT, employ any COUNTY employee for any purpose.

11. Consulting Contract – Follow-On Work:

No person or firm or subsidiary thereof who has been awarded a consulting services contract or a contract which includes a consulting component may be awarded a CONTRACT for the provision of services, the delivery of goods or supplies, or the provision of any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services contract. Therefore, any consultant that contracts with a COUNTY agency/department to develop a feasibility study or to provide formal recommendations is precluded from contracting for any work recommended in the study or included in the recommendations.

12. Contingent Fees:

Intentionally left blank.

13. Bankruptcy/Insolvency:

Intentionally left blank.

14. SUBRECIPIENT's Project Manager and Key Personnel:

SUBRECIPIENT shall appoint a Project Manager to direct the SUBRECIPIENT's efforts in fulfilling SUBRECIPIENT's obligations under this CONTRACT. The name of the Project Manager shall be provided to the COUNTY. If there be a Project Management change the SUBRECIPIENT will notify the COUNTY in writing prior to the change being made.

15. Data – Title To:

All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the SUBRECIPIENT in the performance of this CONTRACT will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the SUBRECIPIENT after completion or termination of this CONTRACT without the express written consent of the COUNTY. All materials, documents, data or information, including copies, must be returned to the COUNTY at the end of this CONTRACT.

16. County Of Orange Child Support Enforcement:

In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of award of CONTRACT, the selected SUBRECIPIENT agrees to furnish to the CONTRACT administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:

- A. In the case of an individual SUBRECIPIENT, his/her name, date of birth, Social Security number, and residence address;
- B. In the case of a SUBRECIPIENT doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
- C. A certification that the SUBRECIPIENT has fully complied with all applicable federal and State reporting requirements regarding its employees; and
- D. A certification that the SUBRECIPIENT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the SUBRECIPIENT to timely submit the data and/or certifications required may result in the CONTRACT being awarded to another SUBRECIPIENT. In the event a CONTRACT has been issued, failure of the SUBRECIPIENT to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

17. EDD Independent Contractor Reporting Requirements:

Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the COUNTY pays \$600 or more or with whom the COUNTY enters into a CONTRACT for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations as set forth in Exhibit 1, attached hereto and incorporated herein by reference.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a CONTRACT for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a CONTRACT for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

18. Emergency/Declared Disaster Requirements:

In the event of an emergency or if Orange County is declared a disaster area by the COUNTY, state or federal government, this CONTRACT may be subjected to unusual usage. The SUBRECIPIENT shall service the COUNTY during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the SUBRECIPIENT shall apply to serving the COUNTY's needs regardless of the circumstances. If the SUBRECIPIENT is unable to supply the goods/services under the

terms of the CONTRACT, then the SUBRECIPIENT shall provide proof of such disruption and a copy of the invoice for the goods/services from the SUBRECIPIENT's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the SUBRECIPIENT shall show both the emergency purchase order number and the CONTRACT number.

19. SUBRECIPIENT's Responsibilities:

The SUBRECIPIENT shall:

Operate and manage the Project and provide Services/Activities as set forth herein. In this regard the SUBRECIPIENT will assess current services being provided, assess what Services/Activities are needed, or have been requested, and structure the Services/Activities accordingly.

20. Business License:

At its own expense, SUBRECIPIENT shall qualify to do business and obtain and maintain such licenses as may be required for the performance by SUBRECIPIENT of its services under this CONTRACT.

21. Disputes – CONTRACT:

A. The PARTIES shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this CONTRACT is not disposed of in a reasonable period of time by the SUBRECIPIENT's Project Manager and the COUNTY's Project Manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:

1. The SUBRECIPIENT shall submit to the agency/department assigned COUNTY Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the PARTIES arising under, related to, or involving this CONTRACT, unless the COUNTY, on its own initiative, has already rendered such a final decision.
2. The SUBRECIPIENT's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the CONTRACT, the SUBRECIPIENT shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the CONTRACT adjustment for which the SUBRECIPIENT believes the COUNTY is liable.
3. Pending the final resolution of any dispute arising under, related to, or involving this CONTRACT, the SUBRECIPIENT agrees to diligently proceed with the provision of services under this CONTRACT. The SUBRECIPIENT's failure to diligently proceed shall be considered a material breach of this CONTRACT.

Any final decision of the COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by the COUNTY Purchasing Agent or his designee. If the COUNTY fails to render a decision within ninety (90) days after receipt of the SUBRECIPIENT's demand, it shall be deemed a final decision adverse to the SUBRECIPIENT's contentions. Nothing in this section shall be construed as affecting the COUNTY's right to terminate the CONTRACT for Cause as stated in Paragraph K herein.

22. Gratuities:

The SUBRECIPIENT warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the SUBRECIPIENT or any agent or representative of the SUBRECIPIENT to any officer or employee of the COUNTY with a view toward securing the CONTRACT or securing favorable treatment with respect to any determinations concerning the performance of the CONTRACT. For breach or violation of this warranty, the COUNTY shall have the right to terminate the CONTRACT, either in whole or in part, and any loss or damage sustained by the COUNTY in procuring on the open market any services which the SUBRECIPIENT agreed to supply shall be borne and paid for by the SUBRECIPIENT. The rights and remedies of the COUNTY provided in this Paragraph 22 shall not be exclusive and are in addition to any other rights and remedies provided by law or under the CONTRACT.

23. Termination – Convenience of the COUNTY:

The COUNTY may terminate performance of work under this CONTRACT for its convenience in whole, or, from time to time, in part if the user agency/department determines that a termination is in the COUNTY's interest. The agency/department assigned buyer shall terminate the CONTRACT by delivering to the SUBRECIPIENT a written notice of termination specifying the extent of the termination and the effective date thereof. The PARTIES agree that, as to the terminated portion of the CONTRACT, the CONTRACT shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the CONTRACT shall not be void.

After receipt of a notice of termination and, except as directed by the assigned buyer, the SUBRECIPIENT shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this Paragraph 23. The SUBRECIPIENT shall:

- A. Stop work as specified in the notice of termination;
- B. Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the CONTRACT;
- C. Terminate all orders and subcontracts to the extent they relate to the work terminated;
- D. Settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts, the approval or ratification of which will be final for purposes of this Paragraph 23;
- E. As directed by the assigned buyer transfer title and deliver to the COUNTY (a) fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the CONTRACT had been completed, would be required to be furnished to the COUNTY;
- F. Complete performance of the work not terminated; and
- G. Take any action that may be necessary or as the COUNTY may direct for the protection and preservation of the property related to this CONTRACT that is in the possession of the SUBRECIPIENT and in which the COUNTY has or may acquire an interest and to

mitigate any potential damages or requests for CONTRACT adjustment or termination settlement to the maximum practical extent.

At the completion of the SUBRECIPIENT's termination efforts, the SUBRECIPIENT may submit to the assigned buyer a list indicating quantity and quality of termination inventory not previously disposed of and request instructions for disposition of the residual termination inventory.

After termination the SUBRECIPIENT shall submit a final termination settlement proposal to the user agency/department in a format acceptable to the COUNTY.

The SUBRECIPIENT shall submit the proposal promptly, but no later than 60 days from the effective date of the termination, unless extended in writing by the COUNTY upon written request of the SUBRECIPIENT within the ninety-day (90-day) period. However, if the agency/department determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension. The SUBRECIPIENT and the COUNTY may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total CONTRACT price as reduced by (a) the amount of payment previously made and (b) the CONTRACT price of work not terminated. The CONTRACT shall be amended and the SUBRECIPIENT paid the agreed amount.

If the SUBRECIPIENT and the COUNTY fail to agree on the whole amount to be paid because of the termination of work, the COUNTY shall pay the SUBRECIPIENT the amounts determined by the COUNTY as follows, but without duplication of any amounts agreed on as set forth above:

- H. The CONTRACT price for completed supplies or services accepted by the COUNTY (or sold or acquired) not previously paid for, adjusted for any savings of freight and other charges; and
- I. Except for normal spoiling and except to the extent that the COUNTY expressly assumes the risk of loss, the COUNTY shall exclude from the amounts payable to the SUBRECIPIENT the fair value, as determined by the agency/department, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the COUNTY. The SUBRECIPIENT shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this Paragraph 23. Such costs shall be allocable to the terminated CONTRACT or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable. The SUBRECIPIENT shall have the right to appeal, under the COUNTY's protest procedure, any determination made by the COUNTY, except that if the SUBRECIPIENT failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal.

In arriving at the amount due the SUBRECIPIENT under this Paragraph 23, there shall be deducted:

- J. All payment to the SUBRECIPIENT under the terminated portion of this CONTRACT;

- K. Any claim which the COUNTY has against the SUBRECIPIENT under this or any other CONTRACT; and
- L. The agreed price for or proceeds of sale of materials, supplies, or other things acquired by the SUBRECIPIENT or sold under the provisions of this Paragraph 23 and not recovered by or credited to the COUNTY.
If the termination is partial, the SUBRECIPIENT may file a proposal with the agency/department for an equitable adjustment of the price(s) of the continued portion of the CONTRACT. The agency/department shall make any equitable adjustment agreed upon. Any proposal by the SUBRECIPIENT for an equitable adjustment under this Paragraph 23 shall be requested within thirty (30) days from the effective date of termination unless extended in writing by agency/department.
- The COUNTY may:
- M. Under the terms and conditions it prescribes, make partial payment and payments against costs incurred by the SUBRECIPIENT for their terminated portion of the CONTRACT, if the COUNTY believes that the total of these payments will not exceed the amount to which the contractor will be entitled; and
- N. If the total payments exceed the amount finally determined to be due, the SUBRECIPIENT shall repay the excess to the COUNTY upon demand.
In determining the amount payable to the SUBRECIPIENT and notwithstanding any other provision, if it appears that the SUBRECIPIENT would have sustained a loss on the entire CONTRACT had it been completed, the COUNTY shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.
Unless otherwise provided in this CONTRACT or by statute, the SUBRECIPIENT shall maintain all records and documents relating to the terminated portion of this CONTRACT for five (5) years after final settlement. This includes all books and other evidence bearing on the SUBRECIPIENT's costs and expenses under this CONTRACT. The SUBRECIPIENT shall make these records and documents available to the COUNTY, at the SUBRECIPIENT's office, at all reasonable times, without any direct charge. If approved by the COUNTY, photographs, microphotographs, electronic storage, or other authentic reproductions may be maintained instead of original records and documents.

24. Termination – Orderly:

After receipt of a termination notice from the County of Orange, the SUBRECIPIENT shall submit to the COUNTY a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the COUNTY upon written request of the SUBRECIPIENT. Upon termination COUNTY agrees to pay the SUBRECIPIENT for all services performed prior to termination which meet the requirements of the CONTRACT, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the CONTRACT. Upon termination or other expiration of this CONTRACT, each PARTY shall promptly return to the other PARTY all papers, materials, and other properties of the other held by each for purposes of execution of the CONTRACT. In addition, each Party will assist the other PARTY in orderly termination of this CONTRACT and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each PARTY.

25. Stop Work:

The COUNTY may, at any time, by written stop work order to the SUBRECIPIENT, require the SUBRECIPIENT to stop all or any part of the work called for by this CONTRACT for a period of 90 days after the stop work order is delivered to the SUBRECIPIENT and for any further period to which the PARTIES may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this Paragraph 25. Upon receipt of the stop work order, the SUBRECIPIENT shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the SUBRECIPIENT or within any extension of that period to which the PARTIES shall have agreed, the COUNTY shall either:

- A. Cancel the stop work order; or
- B. Terminate work covered by the stop work order as provided for in the termination for default or the termination for convenience clause, Paragraph 23 of this CONTRACT.
If a stop work order issued under this Paragraph 25 is canceled or the period of the stop work order or any extension thereof expires, the SUBRECIPIENT shall resume work. The COUNTY shall make an equitable adjustment in the delivery schedule, the CONTRACT price, or both, and the CONTRACT shall be modified in writing accordingly if:
- C. The stop work order results in an increase in the time required or in the SUBRECIPIENT's cost properly allocable to the performance of any part of this CONTRACT; and
- D. The SUBRECIPIENT asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage, provided that if the COUNTY decides the facts justify the action, the COUNTY may receive and act upon a proposal submitted at any time before final payment under this CONTRACT.
If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with the provision entitled, "Termination - Convenience of COUNTY," the COUNTY shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
If a stop work order is not canceled and the work covered by the stop work order is terminated for default, the COUNTY shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.
An appropriate equitable adjustment may be made in any related CONTRACT of the SUBRECIPIENT that provides for adjustment and is affected by any stop work order under this Paragraph 25. The COUNTY shall not be liable to the SUBRECIPIENT for loss of profits because of a stop work order issued under this Paragraph 25.
If any provisions of this agreement are invalid under any applicable statute or rule of law, they are, to that extent, omitted, but the remainder of this agreement shall continue to be binding upon the PARTIES hereto.

26. News/Information Release:

The SUBRECIPIENT agrees that it will not issue any news releases in connection with either the award of this CONTRACT or any subsequent amendment of or effort under this CONTRACT without first obtaining review and written approval of said news releases from the COUNTY through the COUNTY's Project Manager.

27. Notices:

Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' Project Managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For COUNTY:

County of Orange	County of Orange
OC Community Resources	OC Community Resources
Housing and Community Development	Contract Development & Management
Homeless Prevention	CONTRACT MANAGER
PROJECT MANAGER	1501 East St. Andrew Place, 1 st Flr.
1300 South Grand Avenue, Building "B" 3 rd Flr.	Santa Ana, CA 92705-4930
Santa Ana, CA 92705-4407	

For SUBRECIPIENT:

Name
Address

28. Ownership of Documents:

The COUNTY has permanent ownership of all directly connected and derivative materials produced under this CONTRACT by the SUBRECIPIENT. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the COUNTY and may be used by the COUNTY as it may require without additional cost to the COUNTY. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the SUBRECIPIENT without the express written consent of the COUNTY.

29. Precedence:

The CONTRACT documents consist of this CONTRACT and its attachments and exhibits. In the event of a conflict between or among the CONTRACT documents, the order of precedence shall be the provisions of the main body of this CONTRACT, i.e., those provisions set forth in the articles of this CONTRACT, and then the attachments and exhibits.

30. Project Manager, COUNTY:

The COUNTY shall appoint a Project Manager to act as liaison between the COUNTY and the SUBRECIPIENT during the term of this CONTRACT. The COUNTY's Project Manager shall coordinate the activities of the COUNTY staff assigned to work with the SUBRECIPIENT.

31. Errors and Omissions:

All reports, files and other documents prepared and submitted by SUBRECIPIENT shall be complete and shall be carefully checked by the professional(s) identified by SUBRECIPIENT as Project Manager and key personnel attached hereto, prior to submission to the COUNTY. SUBRECIPIENT agrees that COUNTY review is discretionary and SUBRECIPIENT shall not assume that the COUNTY will discover errors and/or omissions. If the COUNTY discovers any errors or omissions prior to approving SUBRECIPIENT's reports, files and other written documents, the reports, files or documents will be returned to SUBRECIPIENT for correction. Should the COUNTY or others discover errors or omissions in the reports, files or other written documents submitted by SUBRECIPIENT after COUNTY approval thereof, COUNTY approval of SUBRECIPIENT's reports, files or documents shall not be used as a defense by SUBRECIPIENT in any action between the COUNTY and SUBRECIPIENT, and the reports, files or documents will be returned to SUBRECIPIENT for correction.

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Program Specific Terms and Conditions**32. BUDGET:**

SUBRECIPIENT agrees that the expenditures of any and all funds under this CONTRACT will be in accordance with the SUBRECIPIENT'S BUDGET, a copy of which is attached hereto as Attachment C, and which by this reference is incorporated herein and made a part hereof as if fully set forth.

33. Modification of BUDGET:

Upon written approval of COUNTY shall have the authority to transfer allocated program funds from one category of the overall program BUDGET to any other category of the overall BUDGET. No such transfer may be made without the express prior written approval of COUNTY. A modification of the BUDGET may include the addition of any new BUDGET category.

34. Payment Requirements:

- A. CONTRACT Amount: It is expressly agreed and understood that the total amount to be paid by COUNTY under this CONTRACT shall not exceed the total COUNTY funding as set forth in Attachment B--Compensation/Payment to SUBRECIPIENT attached hereto and incorporated herein by reference.
- B. COUNTY will reclaim any unused balance of funds for reallocation to other COUNTY approved projects.
- C. Payment of Project Activities:
 - 1. Payment of Project Activities: COUNTY will reimburse SUBRECIPIENT for eligible project-related costs only. SUBRECIPIENT shall submit requests for reimbursement to COUNTY on a monthly basis beginning on November 1, 2016, and must provide adequate documentation as required by COUNTY in accordance with the OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY, as set forth in Exhibit 2, attached hereto and incorporated herein by reference. In addition, SUBRECIPIENT will provide a progress performance report ("GPR INFORMATION FORM") for the time period covered, as prescribed by COUNTY. Failure to provide any of the required documentation and reporting will cause COUNTY to withhold all or a portion of a request for reimbursement, or return the entire reimbursement package to SUBRECIPIENT, until such documentation and reporting has been received and approved by COUNTY.
 - 2. If SUBRECIPIENT has no request for reimbursement during any quarter during the term of this CONTRACT, a GPR Information Form, including and explanation as to why no invoices were being processed, shall be required in lieu of a request for reimbursement.
 - 3. To be determined: To be develop with SUBRECIPIENT during contract negotiation. The following "Required Expenditure Threshold" criteria have been established to guide the SUBRECIPIENT in structuring and scheduling their expenditure of funds received through this CONTRACT, through term of CONTRACT. The criteria thresholds are consistent with the criteria used by OC Community Resources to determine performance including, but not limited to,

determinations of future award of funds, additional funding requests and/or determinations for the recapture of funding.

<u>*Milestone Date</u>	<u>Minimum Required Expenditure Threshold</u>
To Be Determined	50% of Contracted Amount Expended
To Be Determined	70% of Contracted Amount Expended
To Be Determined	80% of Contracted Amount Expended

*Upon SUBRECIPIENT selection and prior to CONTRACT execution, the required milestone dates will be established to comply with state & federal requirements.

4. SUBRECIPIENT will have forty-five (45) days following the expiration of the CONTRACT to submit outstanding invoices for reimbursement of eligible costs incurred during the CONTRACT period. After the forty-five (45) day period for submitting invoices has expired, COUNTY shall reallocate the remaining balance under this CONTRACT for other program purposes and SUBRECIPIENT shall be ineligible for any further reimbursement.
- D. Funds shall not be disbursed for any costs incurred prior to the certification by COUNTY and HUD of Certificate(s) of Insurance as further defined in Paragraph O of this CONTRACT.

35. Program Income:

- A. SUBRECIPIENT shall comply with regulations, as well as all applicable State or COUNTY regulations concerning the reporting and payment procedures for program income.
- B. Definition: Program income means, as provided by 2 CFR § 200.800, 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.
- C. 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 CONTRACT.
- D. 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.
- E. All Program Income accrued shall be returned to COUNTY on a quarterly basis prior to SUBRECIPIENT receiving any reimbursement from grant funds provided under this CONTRACT.
- F. SUBRECIPIENT shall provide information of the receipt of Program Income by SUBRECIPIENT related to Program on all GPR INFORMATION FORMS submitted with requests for reimbursement.

- G. SUBRECIPIENT shall complete and submit a Year-End Program Income letter, indicating amount of Program Income and include any reimbursement remittance necessitated therein, by July 15, after the close of the CONTRACT fiscal year.

36. Performance:

- A. SUBRECIPIENT shall provide the oversight, administration, and project management necessary to accomplish all contracted activities in a timely manner. SUBRECIPIENT also agrees to comply with all applicable Federal, State, and local laws and regulations governing the funds provided under this CONTRACT.
- B. SUBRECIPIENT shall comply with all applicable HUD regulations, as described in Paragraph 39 General Administration of this CONTRACT, concerning administrative requirements and maintain records as to services provided and total number of persons served through the project, including but not limited to, population-served analysis (i.e., extremely-low income persons, very-low income persons, and low-income persons as defined by HUD). Such information shall be available for periodic monitoring by representatives of COUNTY or HUD and shall be submitted by SUBRECIPIENT in report form to COUNTY by dates specified by COUNTY.
- C. The following "Performance Threshold" criteria shall be used to assess the level of performance of the SUBRECIPIENT, including Attachment A--SCOPE OF SERVICES, attached hereto and incorporated herein by reference. Furthermore, the criteria will be considered by OC Community Resources when determining future funding. In order to be considered in compliance with the performance threshold criteria, the SUBRECIPIENT must, on or before the required milestone date, submit to OC Community Resources a request for reimbursement which demonstrates that SUBRECIPIENT has expended funds and met their proposed accomplishment goals at the required levels, unless exempted in writing by the DIRECTOR.

<u>*Milestone Date</u>	<u>Minimum Required Expenditure Threshold</u>
To Be Determined	50% of Contracted Amount Expended 50% of Proposed Accomplishments Met
To Be Determined	70% of Contracted Amount Expended 70% of Proposed Accomplishments Met
To Be Determined	80% of Contracted Amount Expended 80% of Proposed Accomplishments Met

*Upon SUBRECIPIENT selection and prior to CONTRACT execution, the required milestone dates will be established to comply with federal & State requirements.

Failure to achieve at least the aforementioned 50% drawdown, without written exception approved by the DIRECTOR, may cause any remaining balance in this CONTRACT to be reclaimed by COUNTY, and will negatively affect future funding to SUBRECIPIENT. Failure to achieve the aforementioned 80% drawdown goal, without written exception approved by the DIRECTOR, may cause any remaining balance in this CONTRACT to be reclaimed by COUNTY, and will impact future funding to SUBRECIPIENT.

- D. SUBRECIPIENT shall complete and submit a Year End GPR INFORMATION FORM by July 15, after the close of the CONTRACT fiscal year.

- E. Should the activity being funded through this CONTRACT be completed, cancelled or terminated prior to the termination date set forth herein in Paragraph 2. Additional Terms and Conditions, SUBRECIPIENT shall complete and submit a Mid-Year GPR INFORMATION FORM at the time of the completion, cancellation or termination. Said GPR INFORMATION FORM shall consist of a cumulative reporting of project-related expenditures and accomplishments relative to the *SCOPE OF SERVICES*, as set forth in Attachment A, attached hereto and incorporated herein by reference. If activity funded through this CONTRACT is completed, or if funds allocated through this CONTRACT are fully expended, prior to end of CONTRACT term, SUBRECIPIENT must continue to serve its clients for the entire term of this CONTRACT.
- F. SUBRECIPIENT shall complete and submit a GPR INFORMATION FORM in support of all requests for reimbursement. Said GPR INFORMATION FORM shall consist of a cumulative report of project related accomplishments as set forth in Attachment A - Scope of Services, attached hereto and incorporated herein by reference, for the subject quarter. If at any time during the term of this CONTRACT SUBRECIPIENT has no activity occur during any quarter, SUBRECIPIENT shall prepare and submit to COUNTY a Quarterly GPR INFORMATION FORM, regardless of actual activity.
- G. SUBRECIPIENT acknowledges that the GPR INFORMATION FORM is a monitoring tool that will be reviewed and evaluated to determine SUBRECIPIENT's level of performance relative to this CONTRACT.
- H. SUBRECIPIENT shall submit all requested data necessary to complete the Consolidated Annual Performance and Evaluation Report (CAPER), and monitor program accountability and progress in accordance with HUD requirements, in the format and at the time designated by COUNTY.

37. Performance Monitoring:

- A. Performance Monitoring of SUBRECIPIENT by COUNTY, State of California and/or HUD shall consist of requested and/or required written reporting, as well as onsite monitoring by COUNTY, State of California or HUD representatives.
- B. COUNTY shall periodically evaluate SUBRECIPIENT's progress in complying with the terms of this CONTRACT. SUBRECIPIENT shall cooperate fully during such monitoring. COUNTY shall report the findings of each monitoring to SUBRECIPIENT.
- C. COUNTY shall monitor the performance of SUBRECIPIENT against the goals, outcomes, milestones and performance standards required herein. Substandard performance, as determined by COUNTY, will constitute non-compliance with this CONTRACT for which COUNTY may immediately terminate the CONTRACT. If action to correct such substandard performance is not taken by SUBRECIPIENT within the time period specified by COUNTY, payment(s) will be denied in accordance with the provisions contained in this Paragraph 37 of this CONTRACT.

38. Federal Administrative Requirements:

SUBRECIPIENT must comply with all federal requirements as it pertains for 24 CFR Parts 91 and 576, Homeless Emergency Assistance and Rapid Transition to Housing: Emergency

Solutions Grants Program and Consolidated Plan Conforming Amendments as set forth in Attachment E (State HCD ESG Regulations) and Attachment F (Federal ESG Regulations), attached hereto and incorporated herein reference. SUBRECIPIENT acknowledges that administration of its operation and services are subject to the requirements as established in 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. Drug-Free Workplace:

The SUBRECIPIENT hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace as set forth in Exhibit 3, attached hereto and incorporated herein by reference. The SUBRECIPIENT will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The SUBRECIPIENT's policy of maintaining a drug free workplace;
 - c. Any available counseling, rehabilitation, and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(c) that every employee who works under this CONTRACT:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this CONTRACT.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both, and the SUBRECIPIENT may be ineligible for award of any future COUNTY contracts if the COUNTY determines that any of the following has occurred:

- c. The SUBRECIPIENT has made false certification, or
- d. The SUBRECIPIENT violates the certification by failing to carry out the requirements as noted above.

B. Anti-Lobbying: SUBRECIPIENT certifies that it will comply with federal law (31 U.S.C. 1352) and regulations found at 24 CFR Part 87, which provide that:

1. No Federal appropriated funds will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of any Federal CONTRACT, the making of any Federal grant, the making of any Federal loan, the entering into of any Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal CONTRACT, grant, loan, or Cooperative Agreement; and
2. SUBRECIPIENT will complete and submit Standard Form-LLL "Disclosure of Lobbying Activities," if any funds other than Federal appropriated funds have been paid, in accordance with its instructions; and
3. SUBRECIPIENT shall include subject anti-lobbying certification in award documents for all sub-SUBRECIPIENTs at all tiers (including sub-subcontracts, sub-subgrants, and CONTRACT under grants, loans, and Cooperative

Agreements) and that all sub-SUBRECIPIENTS shall certify and disclose accordingly.

C. Matching Requirements:

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 COUNTY. Such contributions shall be entirely consistent with the Matching Requirements as outline by 24 CFR § 576.201. The anticipated source and amount of all matching funds contributed by the SUBRECIPIENT will be enumerated in the Budget, as identified in Attachment C.

39. General Administration:

- A. Fair Housing:** SUBRECIPIENT shall affirmatively further fair housing in accordance with 24 CFR 576. 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, along with all applicable State & Federal requirements.
- B. Grantor Recognition:** SUBRECIPIENT shall insure recognition of the role of the COUNTY in providing services through this CONTRACT. All activities, facilities and items utilized pursuant to this CONTRACT shall be prominently labeled as to funding source. In addition, SUBRECIPIENT will include a reference to the support provided herein in all publications made possible with funds made available under this CONTRACT. SUBRECIPIENT will retain documentation of such recognition, which shall be available for periodic monitoring by representatives of COUNTY or HUD.
- C. Records to be Maintained:** SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 576.500 that are pertinent to the activities to be funded under this CONTRACT. 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. Such records shall include, but not be limited to:
1. Records providing a full description of each activity undertaken;
 2. Records demonstrating that each activity undertaken meets the guidelines of the ESG program;
 3. Records required to determine the eligibility of activities;
 4. Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with ESG assistance;
 5. Records documenting compliance with the fair housing and equal opportunity components of the ESG program;
 6. Financial records as required by federal regulations; and other records necessary to document compliance.
 7. Retention: SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this CONTRACT for a period of five (5) years after the termination of all activities funded under this CONTRACT, or after the resolution of all Federal

audit finding, whichever occurs later. Records for non-expendable property acquired with funds under this CONTRACT shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after s/he has received final payment.

D. Client Data

1. SUBRECIPIENT shall maintain client data demonstrating client Eligibility for services provided for a period of five (5) years after the termination of all activities funded under this CONTRACT, or after the resolution of all Federal audit finding, whichever occurs later. Such data shall be consistent and include, but not limited to, client name, address, verifiable income level (as documented by income tax returns, employee payroll records, retirement statements, etc. or other third party documentation acceptable to COUNTY, for determining eligibility), and description of service provided. Such information shall be made available to HUD representatives, COUNTY monitors, or their designees, for review upon request.
2. SUBRECIPIENT shall develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the subject program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

E. Property Records: SUBRECIPIENT shall maintain real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria, rental limitations, health, safety and building codes, etc., and shall conform to federal and State regulations.

F. Close-Out: SUBRECIPIENT's obligation to COUNTY shall not end until all close-out requirements are completed. Activities during this close-out period shall be completed in accordance with federal and State regulations and shall include, but are not limited to: making final payments; submitting final invoice(s), report(s), in accordance with the requirements of Paragraph 34 above, and documentation; disposing of program assets (including the return to COUNTY of all unused materials and equipment); remitting any program income balances and receivable accounts to COUNTY, and determining the custodianship of records.

G. Equipment: SUBRECIPIENT shall use, manage and dispose of equipment in accordance with federal and State regulations.

H. Subcontracts:

1. SUBRECIPIENT shall submit all subcontract agreements to COUNTY for review and consent prior to entering into such subcontracts. For construction subcontracts, SUBRECIPIENT shall submit the Construction Bid Package to COUNTY for review and written approval by DIRECTOR or designee prior to advertising for bids and award for the construction contract. SUBRECIPIENT shall construct Project in accordance with the Construction Bid Package, which DIRECTOR approved, unless prior written approval is received from DIRECTOR for modification thereof.
2. SUBRECIPIENT shall assume responsibility for all subcontracted services to assure CONTRACT compliance.

3. SUBRECIPIENT shall cause all of the provisions of this CONTRACT in entirety to be included in and made a part of any subcontract executed in the performance of this CONTRACT.
4. SUBRECIPIENT shall monitor all subcontracted services on a quarterly basis to assure CONTRACT compliance. Results of said monitoring efforts shall be summarized in written form, and supported with documented evidence of follow-up actions(s) to correct any area(s) of CONTRACT non-compliance. Documentation shall be made available for periodic monitoring by representatives of COUNTY and/or HUD.

40. Coordination with Continuum of Care

- A. The SUBRECIPIENT must work with the Continuum of Care (“CoC”) to ensure the screening, assessment, and referral of program participants are consistent with the COUNTY’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.

41. HMIS Reporting and Coordinated Entry System Requirements:

The Homeless Management Information System (HMIS) is 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. Participation in HMIS is a requirement of this CONTRACT.

Coordinated Entry System (CES) streamlines access and referral to services and housing using standardized tools and practices ensuring that all people experiencing a housing crisis have fair and equal access and prioritizes homeless assistance for those with the most severe needs. CED is a requirement of this CONTRACT.

42. Signature in Counterparts:

The PARTIES agree that separate copies of the CONTRACT may be signed by each of the PARTIES, and this CONTRACT will have the same force and effect as if the original had been signed by all PARTIES.

43. DUNS Number and Related Information:

The DUNS Number must be provided to COUNTY prior to the execution of this CONTRACT. SUBRECIPIENT shall ensure all DUNS information is up to date and the DUNS number status is "active," prior to execution of this CONTRACT. If COUNTY cannot access the SUBRECIPIENT's DUNS information related to this federal sub award on the Federal Funding Accountability and Transparency Act Sub award Reporting System (SAM.GOV) due to errors in the SUBRECIPIENT's data entry for its DUNS number, the SUBRECIPIENT must immediately update the information as required.

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General Terms and Conditions:

- A. **Governing Law and Venue:** This CONTRACT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange COUNTY, California, and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the PARTIES specifically agree to waive any and all rights to request that an action be transferred for trial to another COUNTY.
- B. **Entire CONTRACT:** This CONTRACT, including Attachments A, B, C, D, E, and F and Exhibits 1, 2, 3 and 4 which are attached hereto and incorporated herein by this reference, when accepted by the SUBRECIPIENT either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire CONTRACT between the PARTIES with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing. Electronic acceptance of any additional terms, conditions or supplemental CONTRACTs by any COUNTY employee or agent, including but not limited to installers of software, shall not be valid or binding on COUNTY unless accepted in writing by COUNTY's Purchasing Agent or his designee, hereinafter "Purchasing Agent."
- C. **Amendments:** No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the PARTIES; no oral understanding or agreement not incorporated herein shall be binding on either of the PARTIES; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery of services is of the essence in this CONTRACT. COUNTY reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the prescribed SCOPE OF SERVICES. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by COUNTY.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by the COUNTY, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of COUNTY, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:**
- SUBRECIPIENT expressly warrants that the services covered by this CONTRACT are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon SUBRECIPIENT's part to indemnify, defend and hold COUNTY and its INDEMNITEES as identified in Paragraph HH below, and as more fully described in Paragraph HH, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by COUNTY by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this CONTRACT, SUBRECIPIENT shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. SUBRECIPIENT warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. SUBRECIPIENT agrees that, in accordance with the more specific requirement contained in Paragraph HH below, it shall indemnify, defend and hold COUNTY and COUNTY INDEMINITEES harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the PARTIES. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or sub-contracted by SUBRECIPIENT without the express written consent of COUNTY. Any attempt by SUBRECIPIENT to assign or sub-contract the performance or any portion thereof of this CONTRACT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this CONTRACT.
- J. **Non-Discrimination:** In the performance of this CONTRACT, SUBRECIPIENT agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-SUBRECIPIENTs to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. SUBRECIPIENT acknowledges that a violation of this provision shall subject SUBRECIPIENT to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, COUNTY has the right to terminate this CONTRACT without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of CONTRACT, any misrepresentation or fraud on the part of the SUBRECIPIENT. Exercise by COUNTY of its right to terminate the CONTRACT shall relieve COUNTY of all further obligations.
- L. **Consent to Breach Not Waiver:** No term or provision of this CONTRACT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either party to any other remedies provided by law.
- N. **Independent Contractor:** SUBRECIPIENT shall be considered an independent contractor and neither SUBRECIPIENT nor its employees; nor anyone working under SUBRECIPIENT shall be considered an agent or an employee of COUNTY.
- Neither SUBRECIPIENT nor its employees; nor anyone working under SUBRECIPIENT shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.
- O. **Performance:** SUBRECIPIENT shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to COUNTY's satisfaction. SUBRECIPIENT shall be responsible for the professional quality, technical assurance, timely completion and coordination

of all documentation and other services furnished by the SUBRECIPIENT under this CONTRACT. SUBRECIPIENT shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of COUNTY required in its governmental capacity, in connection with performance of the work; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-SUBRECIPIENTS.

P. Insurance:

Insurance Provisions

Prior to the provision of services under this CONTRACT, the SUBRECIPIENT agrees to purchase all required insurance at SUBRECIPIENT's expense, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this CONTRACT have been complied with. SUBRECIPIENT agrees to keep such insurance coverage, Certificates of Insurances, and endorsements on deposit with the COUNTY during the entire term of this CONTRACT. In addition, all subcontractors performing work on behalf of SUBRECIPIENT pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for SUBRECIPIENT.

SUBRECIPIENT shall ensure that all subcontractors performing work on behalf of SUBRECIPIENT pursuant to this CONTRACT shall be covered under SUBRECIPIENT 's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for SUBRECIPIENT. SUBRECIPIENT shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from SUBRECIPIENT under this CONTRACT. It is the obligation of SUBRECIPIENT to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by SUBRECIPIENT through the entirety of this CONTRACT for inspection by COUNTY representative(s) at any reasonable time.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the COUNTY Executive Office (CEO)/Office of Risk Management upon review of SUBRECIPIENT's current audited financial report.

If the SUBRECIPIENT fails to maintain insurance acceptable to the COUNTY for the full term of this CONTRACT, the COUNTY may terminate this CONTRACT.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the SUBRECIPIENT shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned, and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Sexual Misconduct Liability	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the State of California, County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the SUBRECIPIENT 's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Network Security and Privacy Liability policy shall contain the following endorsements which accompany the Certificate of Insurance:

- 1). An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.
- 2). A primary and non-contributing endorsement evidencing that the SUBRECIPIENT'S insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

SUBRECIPIENT shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the CONTRACT, upon which the COUNTY may suspend or terminate this CONTRACT.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

*Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

COUNTY expressly retains the right to require SUBRECIPIENT to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT.

Any increase or decrease in insurance will be as deemed by County of Orange Risk MANAGER as appropriate to adequately protect COUNTY.

COUNTY shall notify SUBRECIPIENT in writing of changes in the insurance requirements. If SUBRECIPIENT does not deposit copies of acceptable Certificates of Insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this CONTRACT may be in breach without further notice to SUBRECIPIENT, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit SUBRECIPIENT's liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT, nor act in any way to reduce the policy coverage and limits available from the insurer.

***Certificate Holder Information**

The County of Orange has contracted with Ebix RCS to monitor insurance certificates and endorsements for compliance with the above requirements. Upon initial award of a CONTRACT, the certificate(s) and endorsements(s) should be forwarded to the agency/department address listed on the solicitation. The COUNTY will forward these documents to Ebix RCS on your behalf. Ebix RCS may contact you to advise you of deficiencies and request corrected documents. Please cooperate with their request for information or corrections in order for the COUNTY to continue your CONTRACT through the expiration date.

- Q. Bills and Liens:** SUBRECIPIENT shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. SUBRECIPIENT shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, SUBRECIPIENT shall promptly procure its release and, in accordance with the requirements of Paragraph HH, below, indemnify, defend, and hold COUNTY, and its COUNTY INDEMNITEES harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

- R. **Changes:** SUBRECIPIENT shall make no changes in the work or perform any additional work without the COUNTY's specific written approval.
- S. **Change of Ownership:** SUBRECIPIENT agrees that if there is a change or transfer in ownership of SUBRECIPIENT's business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume SUBRECIPIENT's duties and obligations contained in this CONTRACT and complete them to the satisfaction of COUNTY.
- T. **Force Majeure:** SUBRECIPIENT shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided SUBRECIPIENT gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and SUBRECIPIENT avails himself of any available remedies.
- U. **Confidentiality:** SUBRECIPIENT agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this CONTRACT. All such records and information shall be considered confidential and kept confidential by SUBRECIPIENT and SUBRECIPIENT's staff, agents and employees.
- V. **Compliance with Laws:** SUBRECIPIENT represents and warrants that services to be provided under this CONTRACT shall fully comply, at SUBRECIPIENT's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. SUBRECIPIENT acknowledges that COUNTY is relying on SUBRECIPIENT to ensure such compliance, and pursuant to the requirements of Paragraph HH below, SUBRECIPIENT agrees that it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** SUBRECIPIENT assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this CONTRACT.
- X. **Pricing: Intentionally left blank.**
- Y. **Intentionally left blank.**
- Z. **Terms and Conditions: Intentionally left blank.**
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and Paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition, or provision of this CONTRACT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this CONTRACT, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- EE. **Interpretation:** This CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the party that has drafted it is not applicable and is waived. The provisions of this CONTRACT shall be interpreted in a reasonable manner to affect the purpose of the PARTIES and this CONTRACT.
- FF. **Authority: Intentionally left blank.**
- GG. **Employee Eligibility Verification:** The SUBRECIPIENT warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this CONTRACT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The SUBRECIPIENT shall obtain, from all employees, consultants and sub-SUBRECIPIENTs performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The SUBRECIPIENT shall retain all such documentation for all covered employee, consultants and sub-SUBRECIPIENTs for the period prescribed by the law. The SUBRECIPIENT shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY and its COUNTY INDEMNITEES, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the SUBRECIPIENT or the COUNTY or COUNTY INDEMNITEES, or any combination of the three in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.
- HH. **Indemnification:** SUBRECIPIENT agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by SUBRECIPIENT pursuant to this CONTRACT. If judgment is entered against SUBRECIPIENT and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, SUBRECIPIENT and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- II. **Audits/Inspections:** SUBRECIPIENT agrees to permit the COUNTY's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the COUNTY) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of SUBRECIPIENT for the purpose of auditing or inspecting any aspect of performance under this CONTRACT. The inspection and/or

audit will be confined to those matters connected to the performance of the CONTRACT including, but not limited to, the costs of administering the CONTRACT. The COUNTY will provide reasonable notice of such an audit or inspection.

The COUNTY reserves the right to audit and verify the SUBRECIPIENT's records before final payment is made.

SUBRECIPIENT agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this CONTRACT or by law. SUBRECIPIENT agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, SUBRECIPIENT agrees to include a similar right to the COUNTY to audit records and interview staff of any subcontractor related to performance of this CONTRACT.

Should the SUBRECIPIENT cease to exist as a legal entity, the SUBRECIPIENT's records pertaining to this CONTRACT shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the COUNTY's Project Manager.

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IN WITNESS WHEREOF, the PARTIES hereto certify that they have read and understand all the terms and conditions contained herein and have hereby cause this CONTRACT to be executed.

***Subrecipient**

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Dated: _____	Dated: _____

*For SUBRECIPIENTs that are corporations, signature requirements are as follows: 1) One signature by the Chairman of the Board, the President or any Vice President; and 2) One signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer.

For SUBRECIPIENTs that are not corporations, the person who has authority to bind the SUBRECIPIENT to a CONTRACT, must sign on one of the lines above.

COUNTY OF ORANGE

A Political Subdivision of the State of California

By: _____ Dated: _____

Steve Franks, Director
OC Community Resources

**APPROVED AS TO FORM
DEPUTY COUNTY COUNSEL**

By:  _____

Dated: 08.16.2016

DEPUTY COUNTY COUNSEL