

**KINGS/TULARE CONTINUUM OF CARE ON HOMELESSNESS  
STANDARD AGREEMENT**

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**THIS AGREEMENT** (“**AGREEMENT**”) is entered into as of between the **KINGS/TULARE CONTINUUM OF CARE ON HOMELESSNESS** (“**COC**”), a California Non-Profit Corporation, and the **COUNTY OF TULARE** (“**SUBRECIPIENT**”), a political subdivision of the State of California. The **COC** and **SUBRECIPIENT** are each a “**Party**” and together are the “**Parties**” to this **AGREEMENT**, with reference to providing non-congregate shelter for the sick and medically vulnerable within the homeless population.

**THE PARTIES AGREE AS FOLLOWS:**

1. **TERM:** This **AGREEMENT** becomes effective on the date first written above or on April 10, 2020, whichever is later, and shall expire at 11:59 PM on June 30, 2020 unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this **AGREEMENT**.
2. **SERVICES:** See attached **Exhibit A**.
3. **PAYMENT FOR SERVICES:** It is mutually agreed that the **COC** shall pay **SUBRECIPIENT** no more than a total of **Three Hundred Four Thousand Eight Hundred Eight Dollars AND 84/100 dollars (\$304,808.84)** for all services rendered under this agreement as provided in the attached **Exhibit A**. Expenses for other services or materials not herein listed are neither authorized nor reimbursable. Due to the short project timeline, the **COC** will advance the entire amount to **SUBRECIPIENT** upon receipt of an invoice. Payments under this **AGREEMENT** shall be made in accordance with the **COC’S** normal payment cycle. **SUBRECIPIENT** will not charge, and the **COC** will not pay, any late fee or other late payment penalty. All unexpended funds shall be returned to the **COC** at the completion of the **AGREEMENT**.
4. **ADMINISTRATIVE AND REPORTING REQUIREMENTS:**
  - a. **Primary Funder Requirements:** The administrative and reporting requirements specific to the primary funding source, the Business, Consumer Services and Housing Agency (BCSH), for this **AGREEMENT** are incorporated herein as **Exhibit B**. **SUBRECIPIENT** agrees to abide by all rules, regulations, and reporting requirements of BCSH, as outlined in **Exhibit B**, for the services provided under this **AGREEMENT**.
  - b. **COC Requirements:** The administrative and reporting requirements specific to the **COC**, for this **AGREEMENT** are incorporated herein as **Exhibit C**. **SUBRECIPIENT** agrees to abide by all rules, regulations, and reporting requirements of the **COC**, as outlined in **Exhibit C**, for the services provided under this **AGREEMENT**.
5. **GENERAL AGREEMENT TERMS AND CONDITIONS:** The Terms and Conditions of this **AGREEMENT** are incorporated herein as **Exhibit D**.
6. **NOTICES:**
  - a. Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by email or sent by first class mail, postage prepaid and addressed as follows:

**KINGS/TULARE CONTINUUM OF CARE ON HOMELESSNESS  
STANDARD AGREEMENT**

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COC

Machael Smith, Executive Director  
Kings/Tulare Continuum of Care on  
Homelessness  
PO Box 1742  
Visalia, CA 93279  
(559) 738-8733  
[msmith@kthomelessalliance.org](mailto:msmith@kthomelessalliance.org)

SUBRECIPIENT

Timothy Lutz, Agency Director  
Tulare County Health & Human Services  
Agency  
5957 S. Mooney Blvd.  
Visalia, CA 93277  
(559) 624-8000  
[Tilutz@tularehhsa.org](mailto:Tilutz@tularehhsa.org)

- b. Notice personally delivered is effective when delivered. Notice sent by email is deemed to be received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.
7. **AUTHORITY:** SUBRECIPIENT represents and warrants to the COC that the individual(s) signing this AGREEMENT on its behalf are duly authorized and have legal capacity to sign this AGREEMENT and bind SUBRECIPIENT to its terms. SUBRECIPIENT acknowledges that the COC has relied upon this representation and warranty in entering into this AGREEMENT.
8. **COUNTERPARTS:** The Parties may sign this AGREEMENT in counterparts, each of which is an original and all of which taken together form one single document.

KINGS/TULARE CONTINUUM OF CARE ON HOMELESSNESS  
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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

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

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

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

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

KINGS/TULARE CONTINUUM OF CARE ON  
HOMELESSNESS

Date: 5/19/2020

By 

Print Name Machael Smith

Title Executive Director

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


By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

APPROVE AS TO FORM:

COUNTY COUNSEL

BY 

DEPUTY 

## EXHIBIT A SCOPE OF WORK

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### Receiving Referrals for Hotel Stays

HHSA will rely heavily on community partners to help assess and triage individuals eligible under the above guidelines. Referrals will be generally received under one of the following ways:

- Persons under investigation referrals will be made by a medical professional/health care organization who have determined a positive symptom screen
- Low-risk COVID+ persons will be identified after test results are available for persons under investigation
- High-risk COVID-persons will be identified by community partners who have direct knowledge of individuals in the homeless community and their needs

To ensure resources are directed appropriately, referrals are limited to the above methods. Other community stakeholders can work with a medical professional to perform a screen of any suspected case.

### Arranging for Transportation

For individuals experiencing homelessness without access to a vehicle, transportation must be provided to the hotel site. Generally, MV Transportation will provide transportation to the hotel site for stays. The hotel site selected will normally be the hotel closest to the stayer's current location. As a backup, Logisticare can be used to transport Medi-Cal-eligible individuals.

### Expectations During Stay

Expectations during the stay will vary by the type of individual staying at the hotel

*For persons under investigation:*

- Stay length will last until COVID-19 investigation is complete
- If negative, person will be released in accordance with transportation protocol below
- If COVID+ and low-risk, stay will last until person is not contagious
- If COVID+ and high-risk, person should be transported to health care setting

*For low-risk COVID+ persons:*

- Stay will last until person is not contagious

*For high-risk COVID- persons:*

- Stay will last for up to ninety days. Exact length of time to be determined by HHSA, taking into consideration FEMA funding and shelter in place orders.

In general, the stayer will be expected to remain in the room alone and not engage in any illegal or destructive behavior. If hotel suspects either of these expectations be have been violated, they can contact assigned HLT point person. HLT will notify stayer of expectations via phone call to room.

## EXHIBIT A SCOPE OF WORK

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*The Kings/Tulare Continuum of Care on Homelessness (COC) will provide \$304,808.84 in funds to Tulare County for leasing hotel space for the homeless population in relation to COVID-19.*

The State of California is acting quickly to protect public health and safety as we respond to novel coronavirus (COVID-19) and is mobilizing every level of government to prepare for and respond to spread of the virus.

California has a demonstrated need for hotel and motel rooms around the State to immediately provide non-congregate shelter options for the sick and medically vulnerable. Based upon the latest public health guidance, it is recommended that persons known to be COVID-positive or known to have been exposed to COVID but not requiring hospitalization, and those with high-risk factors such as age over 65, chronic health conditions, and respiratory issues, be separated from other people. Individual living arrangements, such as private rooms at hotels and motels, are recommended for these populations. Congregate care is not recommended at this time, although it may be an option for low-risk and otherwise-healthy persons experiencing homelessness.

In accordance with State guidance and in response to the ongoing COVID-19 epidemic, Tulare County Health & Human Services Agency (HHS) intends to enter into one or more leases with local hotels for the purpose of sheltering individuals experiencing homelessness. The Homeless Liaison Team (HLT) will oversee implementation of these protocols in tandem with community partners and other HHS staff.

### **Total Rooms Available**

HHS is planning to lease the following quantity of rooms:

- Visalia - 16 rooms
- Tulare - up to 50 rooms
- Porterville - 20 rooms

These quantities were chosen based on available resources locally and HHS capacity to provide case management to housed individuals.

### **Preparation for Participating Hotels**

HHS will provide participating hotels the following:

- Federal/state safety guidelines
- Protective equipment/supplies deemed necessary
- A walkthrough/training with Public Health staff

### **Eligible Population**

Funding and HHS capacity to provide hotel space for the homeless community is limited. Consequently, hotel stays will be limited to the following groups:

- Persons under investigation
- Low-risk COVID+ persons
- High-risk COVID- persons

## EXHIBIT A SCOPE OF WORK

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### Wraparound Services During Stay

HHSA will be expected to provide a variety of services to those staying at hotels. The types of services will vary by the stayer, but will generally include:

- i. Laundry
  - a. If hotel is unwilling to do laundry, HHSA will utilize an existing agreement with a vendor to provide this service
  - b. If hotel is willing to do laundry, HHSA will provide appropriate protective equipment to hotel staff
- ii. Food
  - a. Meals will be provided three times a day
- iii. Storage
  - a. Stayers may possess a significant amount of personal belongings
  - b. Forcing an individual to quarantine without providing storage for belongings may be result in a Due Process Violation
  - c. HLF will work with County Sherriff's and City Police Departments to work out potential storage options
- iv. Case Management & Supportive Services

*For persons under investigation*

- a. Prior to a stayer checking-in, Public Health will assign a public health nurse to manage the case until the investigation is complete

*For low-risk COVID +*

- a. HLT will contact Kings/Tulare Homeless Alliance to start assessing potential housing opportunities

*For high-risk COVID -*

- a. HLT will work with HHSA to assign a team consisting of staff including but not limited to the following
  - a. Substance abuse counselor
  - b. Behavioral health case manager
  - c. CalWORKs eligibility worker
- b. HLT will contact Kings/Tulare Homeless Alliance to start assessing potential housing opportunities

### Tracking Stays

Real-time information on hotel sites must be tracked to ensure accurate information and a functioning process. HLT will work with the Kings United Way to purchase needed HMIS licenses and daily monitor client stays for the duration of the hotel lease. HLT will work with Office of Emergency Services to use HMIS information required for FEMA reimbursement claims

### Checking-Out

Check-out procedures will vary by the stayer's current situation. It is hoped that the wraparound services provided during the stay will have led to a housing opportunity. If not, HLT will arrange transportation to an emergency shelter or transit center in the city the stayer lives following check-out.

**EXHIBIT A  
SCOPE OF WORK**

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**Surveillance of Encampments/Local Homeless Population**

- When possible, HHSA outreach staff will conduct visits to large unsheltered locations for the purpose of education and surveillance
- HHSA outreach staff will follow State guidelines (<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Protocols-Homeless-Pop.pdf>) to screen individuals, instruct unsheltered homeless to practice social distancing and shelter in place
- Outreach staff will work in tandem with the Kings/Tulare Homeless Alliance to find an alternate more permanent housing opportunity for the individual

**EXHIBIT B**  
**BUSINESS, CONSUMER SERVICES, AND HOUSING (BCSH) – ADMINISTRATIVE & REPORTING REQUIREMENTS**

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1. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
2. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
3. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
4. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
5. **DISPUTES:** Contractor shall continue with the responsibilities under this Agreement during any dispute.
6. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
7. **INDEPENDENT CONTRACTOR:** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
8. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of



**EXHIBIT B**  
**BUSINESS, CONSUMER SERVICES, AND HOUSING (BCSH) – ADMINISTRATIVE & REPORTING REQUIREMENTS**

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Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

9. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
10. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
11. **TIMELINESS:** Time is of the essence in this Agreement.
12. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
13. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
14. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

The Government Code Chapter on Antitrust claims contains the following definitions:

**EXHIBIT B**  
**BUSINESS, CONSUMER SERVICES, AND HOUSING (BCSH) – ADMINISTRATIVE & REPORTING REQUIREMENTS**

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- a. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- b. "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- c. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- d. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- e. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

**15. CHILD SUPPORT COMPLIANCE ACT:** For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

**EXHIBIT B**  
**BUSINESS, CONSUMER SERVICES, AND HOUSING (BCSH) – ADMINISTRATIVE & REPORTING REQUIREMENTS**

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- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 16. UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
- 17. PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
- 18. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**
  - a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt.Code § 14841.)
  - b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
- 19. LOSS LEADER:** If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

**EXHIBIT C**  
**COC – ADMINISTRATIVE & REPORTING REQUIREMENTS**

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1. **GENERAL:** All services under this AGREEMENT will be provided in Kings and/or Tulare Counties as described in the Scope of work attached hereto and incorporated herein as Exhibit A.
2. **SERVICES:** All services shall be performed by qualified and experienced personnel who are not employed by the COC or the State. SUBRECIPIENT represents and warrants that the services to be performed will conform to the requirements of this AGREEMENT; all applicable federal, state and local laws; and the highest professional standards.

SUBRECIPIENT represents and warrants to the COC that it and its contractors and subcontractors have, shall obtain, and shall keep in full force and effect during the term hereof, at their sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that are legally required of SUBRECIPIENT to practice their professions.

3. **CLIENT DATA:** SUBRECIPIENT shall participate in the Homeless Management Information System (HMIS) to collect and maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, homeless status or other basis for determining eligibility, and descriptions of services provided.
4. **ACCOUNTING STANDARDS:** SUBRECIPIENT agrees to comply with 2 CFR Part 2400 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
5. **PROCUREMENT:** SUBRECIPIENT shall comply with the procurement requirements in 2 CFR Part 2400 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards concerning the purchase of services, supplies or equipment and concerning the required maintenance of inventory and records for all services, equipment and supplies procured with funds provided herein. In addition, SUBRECIPIENT shall procure all materials, property, or services in accordance with the requirements of 2 CFR Part 2400 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
6. **REIMBURSEMENT:** The COC shall reimburse SUBRECIPIENT only for actual incurred costs. Only those allowable costs directly related to this AGREEMENT shall be paid. The amount of each request must be limited to the amount needed for payment of eligible costs.

In the event that the COC determines that any funds were expended by SUBRECIPIENT for unauthorized or ineligible purposes or the expenditures constitute disallowed costs in any other way, the COC may order repayment of the same. SUBRECIPIENT shall remit the disallowed amount to the COC within thirty (30) days of written notice of the disallowance.

7. **PROGRAM INCOME:** SUBRECIPIENT shall report monthly on all program income generated by activities carried out with grant funds made available under this AGREEMENT. SUBRECIPIENT may use such income only during the term of this AGREEMENT and only for activities permitted under this AGREEMENT and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the COC at the completion of the AGREEMENT.
8. **CLOSE-OUT:** SUBRECIPIENT's obligations to the COC shall not end until all close-out requirements are completed, including, but not limited to:

**EXHIBIT C**  
**COC – ADMINISTRATIVE & REPORTING REQUIREMENTS**

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- a. Receipt of final payments from the COC under this AGREEMENT;
- b. Disposing of program assets (including the return of all unused materials, equipment, and accounts receivable to the COC); and
- c. Determining the custodianship of records.

Notwithstanding the foregoing, the terms of this AGREEMENT shall remain in effect during any period that SUBRECIPIENT has control over contract funds, including program income. All program assets (unexpended program income, property, equipment, etc.) shall revert to the COC upon termination of this AGREEMENT.

**9. RETENTION:**

- a. SUBRECIPIENT shall retain all records required by or pertinent to this AGREEMENT for five (5) years. The five-year retention period begins on the date of the termination of this AGREEMENT. Notwithstanding the above, if there is litigation, claims, demands, audits, negotiations, disputes or other actions that involve any of the records and that have started before the expiration of the required retention period, then such records must be retained until completion of the actions and final resolution of all issues, or the expiration of the required retention period, whichever occurs later.
- b. SUBRECIPIENT agrees that the COC, primary funder, or their designees shall have the right to review, obtain, and copy all records and supporting documentation pertaining to the performance of this AGREEMENT. The SUBRECIPIENT agrees to provide the COC, primary funder, or their designees with any relevant information requested.

**EXHIBIT D**  
**TERMS AND CONDITIONS**

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1. **GENERAL COMPLIANCE:** SUBRECIPIENT agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, environmental protection, equal opportunity, fair housing, and all other matters applicable and/or related to the Project, Subcontractors, and all eligible activities. With respect to SUBRECIPIENT'S employees, SUBRECIPIENT must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

SUBRECIPIENT shall also be responsible for obtaining any and all permits, licenses, and approvals required for performing any activities under this AGREEMENT, including those necessary to perform design, construction, or operation and maintenance of the activities. SUBRECIPIENT shall be responsible for observing and complying with any applicable federal, state, and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental protection, procurement, and safety laws, rules, regulations, and ordinances. SUBRECIPIENT shall provide copies of permits and approvals to the COC upon request.

2. **GOVERNING LAW:** The laws of the State of California, without reference to California conflict of laws principles, govern this AGREEMENT and its interpretation. The Parties agree that this AGREEMENT is made in and will be performed in Tulare County, California.
3. **DISALLOWANCE:** If SUBRECIPIENT requests or receives payment from the COC for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, SUBRECIPIENT shall promptly refund the disallowed amount to the COC upon the COC'S request. At its option, the COC may offset the amount disallowed from any payment due or to become due to SUBRECIPIENT under this AGREEMENT or any

other Agreement between SUBRECIPIENT and the COC. SUBRECIPIENT'S obligations under this section 3 will survive the expiration or termination of this AGREEMENT.

4. **LIABILITY OF COC:** The COC'S payment obligations under this AGREEMENT shall be limited to the payment of the compensation provided for in item 3, "PAYMENT FOR SERVICES," of this AGREEMENT. Notwithstanding any other provision of this AGREEMENT, in no event shall the COC be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this AGREEMENT or the services performed in connection with this AGREEMENT.
5. **RECORDS AND AUDIT:** SUBRECIPIENT must maintain complete and accurate records with respect to the services rendered and the costs incurred under this AGREEMENT. In addition, SUBRECIPIENT must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, SUBRECIPIENT must make the records available to the COC, its Auditors, and the primary funder of the grant, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this AGREEMENT.
6. **WORK PRODUCT:** All work product, equipment, or materials created for the COC or purchased by the COC under this AGREEMENT belong to the COC and SUBRECIPIENT must immediately deliver them to the COC at the COC'S request upon termination or completion of this AGREEMENT.
7. **INSPECTIONS:** The COC reserves the right to inspect any work performed hereunder to ensure that the work is being and has been performed in accordance with the applicable

**EXHIBIT D**  
**TERMS AND CONDITIONS**

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Federal, State and/or local requirements, and this AGREEMENT. The COC reserves the right to require that all work that is determined based on such inspections not to conform to the applicable requirements be corrected and to withhold payments to SUBRECIPIENT until it is corrected.

- 8. INDEPENDENT CONTRACTOR:** The Parties enter into this AGREEMENT with the express understanding that SUBRECIPIENT will perform all services required under this AGREEMENT as an independent contractor. The Parties agree that the SUBRECIPIENT and any of its agents, employees, or officers cannot be considered agents, employees, or officers of the COC. SUBRECIPIENT agrees to advise everyone it assigns or hires to perform any duty under this AGREEMENT that they are not employees of the COC. Subject to any performance criteria contained in this AGREEMENT, SUBRECIPIENT will be solely responsible for determining the means and methods of performing the specified services and the COC will have no right to control or exercise any supervision over SUBRECIPIENT as to how the SUBRECIPIENT will perform the services. As SUBRECIPIENT is not the COC'S employee, SUBRECIPIENT is responsible for paying all required state and federal taxes. In particular, the COC will not:
- a. Withhold FICA (Social Security) from SUBRECIPIENT'S payments.
  - b. Make state or federal unemployment insurance contributions on SUBRECIPIENT'S behalf.
  - c. Withhold state or federal income tax from payments to SUBRECIPIENT.
  - d. Make disability insurance contributions on behalf of SUBRECIPIENT.
  - e. Obtain unemployment compensation insurance on behalf of SUBRECIPIENT.

Notwithstanding this independent contractor relationship, the COC will have the right to monitor and evaluate the performance of

SUBRECIPIENT to assure compliance with this AGREEMENT.

- 9. WORKERS' COMPENSATION:** SUBRECIPIENT shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this AGREEMENT.
- 10. CONFLICT OF INTEREST:** At all times during the performance of this AGREEMENT, SUBRECIPIENT must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including SUBRECIPIENT for this purpose, from making any decision on behalf of the COC in which the officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COC decision that has the potential to confer any pecuniary benefit on SUBRECIPIENT or any business firm in which SUBRECIPIENT has an interest, with certain narrow exceptions.

SUBRECIPIENT agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform the COC and provide all information needed for resolution of this question.

**11. INDEMNIFICATION AND DEFENSE:**

- a. To the fullest extent permitted by law, SUBRECIPIENT must indemnify, defend (at SUBRECIPIENT'S sole cost and expense and with legal counsel approved by the COC, which approval may not be unreasonably withheld), protect and hold harmless the COC, all subsidiaries, divisions and affiliated agencies of the COC, and all of their

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representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and the COC general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of SUBRECIPIENT with respect to any work performed or services provided under this AGREEMENT (including, without limitation, the acts, errors and/or omissions of SUBRECIPIENT, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). SUBRECIPIENT'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then SUBRECIPIENT'S indemnification obligation shall be reduced in proportion to the established comparative liability.

- b.** The duty to defend is a separate and distinct obligation from SUBRECIPIENT'S duty to indemnify. SUB-

RECIPIENT shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties 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. Payment to SUBRECIPIENT by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this AGREEMENT. An allegation or determination that persons other than SUBRECIPIENT are responsible for the Claim does not relieve SUBRECIPIENT from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an 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 an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then SUBRECIPIENT may submit a claim to the the COC for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. SUBRECIPIENT'S indemnification obligations under this AGREEMENT will survive the expiration or earlier termination of this AGREEMENT until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. SUBRECIPIENT'S liability for indemnification under this AGREEMENT is in addition to any liability SUBRECIPIENT



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may have to the COC for a breach by SUBRECIPIENT of any of the provisions of this AGREEMENT. Under no circumstances may the insurance requirements and limits set forth in this AGREEMENT be construed to limit SUBRECIPIENT'S indemnification obligation or other liability under this AGREEMENT. The terms of this AGREEMENT are contractual and the result of negotiation between the Parties.

- c. SUBRECIPIENT must indemnify and hold the COC harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the COC, or any of its officers or agents, of articles or services to be supplied in the performance of this AGREEMENT.

**12. TERMINATION:**

- a. **Without Cause:** The COC may terminate this AGREEMENT without cause by giving thirty (30) days' prior written notice to SUBRECIPIENT of its intention to terminate under this provision, specifying the date of termination. The COC will pay to SUBRECIPIENT the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The COC will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this AGREEMENT, and is conditioned upon receipt from SUBRECIPIENT of all plans, specifications and estimates, and other documents prepared by SUBRECIPIENT in accordance with this AGREEMENT. The COC will not impose sanctions on

SUBRECIPIENT under these circumstances.

- b. **With Cause:** Either Party may terminate this AGREEMENT immediately, by written notice to the other Party, should the other Party:
- (1) Be adjudged a bankrupt, or
  - (2) Become insolvent or have a receiver appointed, or
  - (3) Make a general assignment for the benefit of creditors, or
  - (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this AGREEMENT, or
  - (5) Materially breach this Agreement.

In addition, the COC may terminate this AGREEMENT based on:

- (6) Material misrepresentation, either by SUBRECIPIENT or anyone acting on SUBRECIPIENT'S behalf, as to any matter related in any way to the COC'S retention of SUBRECIPIENT, or
- (7) Other misconduct or circumstances that, in the sole discretion of the COC, either impairs the ability of SUBRECIPIENT to competently provide the services under this AGREEMENT, or exposes the COC to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If SUBRECIPIENT fails to perform according to the terms and

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conditions of this AGREEMENT, then the COC may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to SUBRECIPIENT.

Upon a material breach, the AGREEMENT may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the nondefaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the nondefaulting Party may terminate this AGREEMENT on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the nondefaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this AGREEMENT upon written notice specifying the date of termination.

The COC will pay to SUBRECIPIENT the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this AGREEMENT, and is conditioned upon receipt from SUBRECIPIENT of all plans, specifications and estimates, and other documents prepared by SUBRECIPIENT by the date of termination in accordance with this AGREEMENT. The COC will not pay lost antici-

pated profits or other economic loss, nor will the COC pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If the COC terminates this AGREEMENT for cause and the expense of finishing SUBRECIPIENT'S scope of work exceeds the unpaid balance of the AGREEMENT, then SUBRECIPIENT must pay the difference to the COC. The COC may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of SUBRECIPIENT'S non-performance.

- c. **Effects of Termination:** Expiration or termination of this AGREEMENT will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the AGREEMENT, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where the COC terminates SUBRECIPIENT'S services, that termination will not affect any rights of the COC to recover damages against SUBRECIPIENT.
- d. **Suspension of Performance:** Independent of any right to terminate this AGREEMENT, the authorized representative of the the COC department or agency for which SUBRECIPIENT'S services are to be performed, may immediately suspend performance by SUBRECIPIENT, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by SUBRECIPIENT to comply with the provisions of this AGREEMENT, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

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**13. INSURANCE & BONDING:**

a. **Insurance:** SUBRECIPIENT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by SUBRECIPIENT, his agents, representatives, employees or subcontractors.

b. **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 0001 1207 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if SUBRECIPIENT has no owned autos, hired (Code 8), and non-owned autos (Code 9), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

(4) Professional Liability (Errors and Omissions): Insurance appropriate to SUBRECIPIENT'S profession, with a limit of no less than \$1,000,000 per occurrence and \$1,000,000 aggregate.

SUBRECIPIENT'S insurance policies shall be occurrence policies and not claims-made coverage. SUBRECIPIENT may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, SUBRECIPIENT shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this subsection A.; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

c. **Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

**14. CITIZEN PARTICIPATION:** SUBRECIPIENT will have processes in place (satisfaction surveys, Board representation, grievance procedures, etc.) which receive, document and utilize the input from low-income persons potentially benefiting or affected by the program or project covered under this AGREEMENT.

**15. CIVIL RIGHTS:**

a. **General Compliance:** SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974

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- as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
- b. Nondiscrimination:** SUBRECIPIENT agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable, which stipulates that no person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part pursuant to this agreement.
- 16. TIME OF ESSENCE:** The Parties agree that time is of the essence under this AGREEMENT, unless they agree otherwise in writing.
- 17. CONDUCT:**
- a. Assignability:** SUBRECIPIENT shall not assign or transfer any interest in this AGREEMENT without the prior written consent of the COC; provided, however, that claims for money due or to become due to SUBRECIPIENT from SUBRECIPIENT under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to SUBRECIPIENT. All terms and conditions of this AGREEMENT shall apply to any approved subcontract or assignment related to the AGREEMENT.
- b. Religious Activities:** SUBRECIPIENT agrees that funds provided under this AGREEMENT will not be utilized for inherently religious activities such as worship, religious instruction, or proselytization.
- 18. SEVERABILITY:** It is understood and agreed by the parties that if any part, term, or provision of this AGREEMENT is held by the courts to be invalid, illegal or in conflict with any law, the remainder of the AGREEMENT shall not be affected thereby and all other parts of this AGREEMENT shall nevertheless be in full force and effect.
- 19. WAIVER:** The COC's failure to act with respect to a breach by SUBRECIPIENT does not waive its right to act with respect to subsequent or similar breaches. The failure of the COC to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
- 20. SUCCESSORS:** This AGREEMENT shall be binding upon each of the parties, their assigns, purchasers, trustees, and successors.
- 21. ENTIRE AGREEMENT:** This AGREEMENT constitutes the entire agreement between the COC and SUBRECIPIENT for the use of funds received under this AGREEMENT and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the COC and SUBRECIPIENT with respect to this AGREEMENT.
- 22. NO THIRD-PARTY BENEFICIARIES:** Except as expressly provided otherwise, this AGREEMENT is intended to be solely for the benefit of the parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause or action or other right.
- 23. LITIGATION:** If any provision of this AGREEMENT, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of SUBRECIPIENT, shall not affect any other provisions of this AGREEMENT and the remainder of this AGREEMENT shall remain in full force and effect. Therefore, the provisions of this AGREEMENT are and shall be deemed severable.

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**24. SUBRECIPIENT:** SUBRECIPIENT shall notify the COC immediately of any claim or action undertaken by or against it, which affects or may affect this AGREEMENT, the COC or SUBRECIPIENT, and shall take such action with respect to the claim or action as is consistent with the terms of this AGREEMENT and the interests of the COC and SUBRECIPIENT.

**25. DISPUTES AND DISPUTE RESOLUTION:** SUBRECIPIENT shall continue with its responsibilities under this AGREEMENT during any dispute. If a dispute arises out of or relating to this AGREEMENT, or the breach of the AGREEMENT, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

**26. GOVERNING LAW AND JURISDICTION:** This AGREEMENT shall be construed in accordance with the laws of the State of California. In the event of any dispute over the AGREEMENT'S terms and conditions, the exclusive venue and jurisdiction for any litigation arising there under shall be in the Superior Court of Tulare County, California, and, if necessary for exclusive federal questions, the United States District Court for the Eastern District of California.

**27. ASSURANCES OF NON-DISCRIMINATION:** SUBRECIPIENT must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both SUBRECIPIENT and the COC have the responsibility to protect the COC employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, SUBRECIPIENT agrees

to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The COC, in its sole discretion, has the right to require SUBRECIPIENT to replace any employee who provides services of any kind to the COC under this AGREEMENT with other employees where the COC is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. The COC'S right to require replacement of employees under this section does not preclude the COC from terminating this AGREEMENT with or without cause as provided for under this AGREEMENT.

**28. DRUG-FREE WORKPLACE POLICY:** SUBRECIPIENT acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COC premises. SUBRECIPIENT agrees that any violation of this prohibition by SUBRECIPIENT, its employees, agents, or assigns will be deemed a material breach of this AGREEMENT.