

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT (Amendment) effective as of June 10, 2021, amends the Agreement (as defined below) entered into between the City of Fresno (CITY), and County of Fresno (COUNTY). CITY and COUNTY are collectively referred to as Parties.

RECITALS

WHEREAS, the CITY and the COUNTY entered into an Agreement, dated October 15, 2020, for the use of HEARTH Emergency Solutions Grant (ESG) funds to the CITY under Coronavirus Aid, Relief and Economic Security Act (CARES Act) (ESG-CV) for the administration and implementation of the Joint COVID-19 Homeless Response Plan to protect the health and safety of people experiencing homelessness and reduce the spread of the COVID-19 outbreak (Agreement); and

WHEREAS, the CITY and the COUNTY desire to amend the Agreement to include provisions that will ensure the COUNTY is meeting HUD expenditure deadlines and will allow the CITY to recapture unspent ESG-CV dollars for reprogramming and include a COUNTY Spending Plan for the ESG-CV dollars; and

WHEREAS, the CITY and the COUNTY also desire to modify the Scope of Services to include Rapid Rehousing as an activity to meet the needs of homeless individuals impacted by COVID-19; and extend the term of the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual premises herein contained, and for other good and valuable consideration hereby acknowledge, the Parties agree that the aforesaid Agreement be amended as follows:

1. Article 1 of the Agreement (Definitions) shall be amended to include the following definitions:

R. "Progressive Expenditure Deadlines" for the specific purpose of this Agreement, the progressive expenditure deadlines are: 20% of the grant award must be expended by September 30, 2021; 80% of the grant award must be expended by March 31, 2022; and 100% of the grant award must be expended by June 30, 2022. Failure to meet these deadlines, will result in the recapture of an amount equal to the difference between the required expenditure by the applicable deadline and the actual expenditure by the applicable deadline.

S. "Progressive Reimbursement Request Deadlines" for the specific purpose of this Agreement, the COUNTY requests for reimbursement of eligible ESG-CV expenditures must be made within 30 days of the respective Progressive Expenditure Deadlines. The Progressive Reimbursement Deadlines are: a request for reimbursement of an amount not less than 20% of the grant award's allowed cost must be made by October 31, 2021; a request for reimbursement of an amount not less than 80% of the grant award's allowed cost must be made by April 30, 2022; and a request for reimbursement of an amount not less than 100% of the grant award's allowed cost must be made by

July 31, 2022.

T. "Recapture" shall mean the CITY may recapture up to 20% of the COUNTY's total ESG-CV award if the COUNTY has not requested reimbursement of 20% of allowed ESG-CV costs by October 31, 2021; recapture up to 80% of the COUNTY's total ESG-CV award if the COUNTY has not requested reimbursement of 80% of allowed ESG-CV costs by April 30, 2022; recapture up to 100% of the COUNTY's total ESG-CV award if the COUNTY has not requested reimbursement of 100% of allowed ESG-CV costs by July 31, 2022.

2. The term of the Agreement shall be extended to June 30, 2022, with the commencement of the period of performance remaining June 11, 2020.

3. Section 4 (Compensation and Method of Payment) shall be deleted in its entirety and replaced with the following:

4. **Compensation and Method of Payment.** CITY shall pay COUNTY the aggregate sum not to exceed One Million Nine Hundred Ninety-Eight Thousand Three Hundred Thirty-Four Dollars and Fifty Cents (\$1,998,334.50) for satisfactory performance of the services rendered therefore and as set forth in **Exhibit B** attached hereto and incorporated herein. Compensation is based on actual expenditures, supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or any other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and submitted by the COUNTY to the CITY with each request for reimbursement. The COUNTY's request for reimbursement shall also be in accordance with the Budget set forth in **Exhibit B**, the Progressive Expenditure Deadlines and Recapture Provisions set forth in **Exhibit A**, and the Spending Plan by Expenditure Deadline set forth in **Exhibit F**. It is understood that all expenses incidental to COUNTY's performance of services under this Agreement shall be borne by the COUNTY. If COUNTY should fail to comply with any provisions of this Agreement, including but not limited to the Progressive Expenditure Deadlines or Progressive Reimbursement Request Deadlines, CITY shall be relieved of its obligation for further compensation. Notwithstanding any payment provisions herein, COUNTY's failure to timely and properly submit required records and reports set forth in this Agreement may be cause for CITY to suspend or delay reimbursement payments to COUNTY or Recapture ESG-CV funds, as allowed by HUD.

a. Payments shall be made by the CITY to COUNTY in arrears for services provided during the preceding month. Such payment by CITY shall be made in the normal course of business, generally within forty-five (45) days after the date of receipt by CITY of a correctly completed and supported invoice in accordance with the provisions of this paragraph and shall be for the actual expenditures incurred by COUNTY in accordance with **Exhibit B**. Payments shall be made after timely receipt and verification of actual expenditures. All invoices are to be submitted CITY at

the address given for notices on the signature page hereof or at such address the CITY may from time to time designate by written notice.

b. The Administrator may, in his or her sole discretion, agree in writing to revise the payment schedule in subsection (a), above, upon COUNTY's showing that such revision will facilitate timely delivery of the services; provided, however, that total payments under this Agreement shall not exceed the total amount provided for in this Section 4 and the revision will not adversely impact the Progressive Expenditure Deadline and result in a return of funds to HUD.

c. Any funds paid by CITY hereunder which remain unearned at the expiration or earlier termination of the Agreement shall be, and remain in trust, the property of CITY and shall be remitted to CITY within 10 days of expiration or earlier termination of this Agreement. Any interest thereon must be credited to or returned to CITY. All funds advanced pursuant to this Agreement and not expended shall be returned to CITY.

d. CITY will not be obligated to make any payments under this Agreement if the request for payment is received by the CITY more than 60 days after the date of termination of this Agreement or the date of expiration of this Agreement, whichever occurs first.

e. COUNTY understands and agrees that the availability of ESG-CV Funding hereunder is subject to the control of HUD and should the ESG-CV funding be encumbered, withdrawn, or otherwise made unavailable to CITY whether earned or promised to COUNTY and/or should CITY in any fiscal year hereunder fail to appropriate said funds, CITY shall not provide said funds to COUNTY unless and until they are made available for payment to CITY by HUD and CITY receives and appropriates said Funds. No other funds owned or controlled by CITY shall be obligated under this Agreement to the project(s). Should sufficient funds not be appropriated, the Services provided may be modified, or this Agreement terminated, at any time by the CITY as provided in section 8 below.

f. COUNTY shall use the funds provided by CITY solely for the purpose of providing the services required under Section 2 of this Agreement.

4. Exhibit A (Scope of Services) shall be deleted in its entirety and replaced with the attached Revised Exhibit "A". All references in the Agreement to Exhibit "A" shall be changed to Revised Exhibit "A".

5. The Agreement shall be amended to include the attached County Spending Plan for City ESG-CV1 as Exhibit "F".


6. In the event of any conflict between the body of this Amendment and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any

Exhibit or Attachment hereto which purport to modify the allocation of risk between the Parties, provided for within the body of this Amendment, shall be null and void.


7. Except as otherwise provided herein, the Agreement entered into by the CITY and the COUNTY, dated October 15, 2020, remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

By: 
Thomas Esqueda
City Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: 
Tracy N. Parvanian Date
Senior Deputy City Attorney 7.22.21


ATTEST:
BRIANA PARRA, CMC
Interim City Clerk

By:  7/23/21
Barbara Lopez Deputy

Addresses:
CITY:
City of Fresno
Attention: Thomas Morgan,
Housing and Community Development
Manager
2600 Fresno Street, CHN 3065
Fresno, CA 93721
Phone: (559) 621-8064
FAX:

Attachments:
Revised Exhibit A – Scope of Services
Exhibit F- County Spending Plan for City of Fresno ESG-CV 1

COUNTY OF FRESNO

By: 
Steve Brandau, Chairman of the
Board of Supervisors of the
County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 
Jose Cruz, Deputy

COUNTY:
COUNTY OF FRESNO
Administrative Office
Attention: Sonia de la Rosa Principal
Administrative Analyst
2281 Tulare, Suite 304
Fresno CA 93721
Phone: (559) 600-1710

FOR ACCOUNTING USE ONLY:
Fund/Subclass: 0001/10000
ORG No.: 56107095
Account No.: 7870

**REVISED EXHIBIT A
SCOPE OF SERVICES**

Agreement Between CITY OF FRESNO and County of Fresno

Coronavirus Emergency Solutions Grant (ESG-CV)

Scope of Work

COUNTY shall invest in COVID-19 prevention and containment efforts for temporary shelters, including, but not limited to, medically indicated services and supplies, such as testing and handwashing stations, and enhancements to existing shelter facilities. COUNTY shall provide rapid rehousing to homeless individuals transitioning from emergency shelter into more permanent housing. The intent is to allow for proper social distancing and isolation to reduce the spread of COVID-19 among the homeless population.

Record Retention and Reporting Requirements

The COUNTY must retain records in accordance 24 CFR Subpart F – Grant Administration, §576.500, Recordkeeping and Reporting Requirements.

HUD requires recipients to report the uses of ESG-CV funding in their Consolidated Annual Performance and Evaluation Report (CAPER) and through submission of project data into the SAGE Homeless Management Information System (HMIS) Repository. Quarterly reporting from the SUBRECIPIENT to the City is mandatory to meet this requirement.

The CITY's quarterly reporting requirements are described within this Agreement and the report form is attached as Exhibit C.

Monitoring

The COUNTY must monitor any and all subawards to subrecipients in accordance with U.S. Department of Housing and Urban Development requirements. The SUBRECIPIENT is further encouraged to use HUD CPD Monitoring Handbook - 6509.2 REV-7, CHG-1.

The COUNTY acknowledges that the CITY is required to periodically monitor the COUNTY's delivery of the subject ESG-CV funding. The CITY will utilize the guidance in HUD CPD Monitoring Handbook - 6509.2 REV-7, CHG-1 as well as 24 CFR 756, 2 CFR 200 and this Agreement when conducting on-site and desk monitoring reviews.

Progressive Expenditure Deadlines and Recapture Provisions

To ensure ESG-CV funds are spent quickly on eligible activities to address the public health and economic crises caused by coronavirus, HUD is requiring that the CITY complete eligible reimbursement draw-downs from the U.S. Treasury within 90 days of the last day of the applicable progressive expenditure deadline cycle. To ensure that the CITY meets this HUD requirement, the CITY has set forth a Spending Plan by Progressive Expenditure Deadline, which is included in EXHIBIT F to this AGREEMENT, and a reimbursement request and accomplishment data processing

schedule that may be found in TABLE 1 below and more fully described in subsequent narrative.

TABLE 1

| A. Progressive Expenditure Deadline Percentage of Grant Award | B. Expenditure Cycle Ending: | C. Request for Reimbursement Packet and Accomplishment Data Submitted by SUBRECIPIENT to CITY By/Before | D. SUBRECIPIENT Reimbursement and Data Packet Deficiencies Cured By/Before: | E. CITY Uploads Accomplishment Data into HUD Reporting System By/Before | F. CITY Completes HUD IDIS Drawdown By/Before: |
|--|---------------------------------------|--|--|---|---|
| | | | | | |
| 20% | Sep. 30, 2021 | Oct. 31, 2021 | Nov. 30, 2021 | Oct.31, 2021 | Dec. 15, 2021 |
| 80% | Mar 31, 2022 | Apr. 30, 2022 | May 31, 2022 | Apr. 30, 2022 | Jun. 15, 2022 |
| 100% | Jun. 30, 2022 | Jul. 31, 2022 | Aug. 30, 2022 | Jul. 31,2022 | Sep. 15, 2022 |

Consistent with Table 1 and HUD and CITY requirements, the City will recapture: i) the expenditure shortfall up to 20 percent of the SUBRECIPIENT's total ESG-CV award should the SUBRECIPIENT not request by October 31, 2021 reimbursement for eligible and allowed costs for at least 20% of the ESG-CV award for the expenditure cycle ending September 30, 2021; ii) recapture the expenditure shortfall up to 80% of the SUBRECIPIENT's total ESG-CV award should the SUBRECIPIENT not request by April 30, 2022 reimbursement for eligible and allowed costs for at least 80% of expended eligible and allowed costs under the ESG-CV award for the expenditure cycle ending March 31, 2022; iii) recapture the expenditure shortfall up to 100 percent of the SUBRECIPIENT's total ESG-CV award should the SUBRECIPIENT not request by July 31, 2022 reimbursement for eligible and allowed costs for at least 100% of expended eligible and allowed costs under the ESG-CV award for the expenditure cycle ending June 30, 2022. These periods and reimbursement request due dates are summarized in Table 1, Columns A, B, and C, above

In the event, the CITY determines that a reimbursement request or portions thereof are eligible for reimbursement, but inadequately supported, the CITY may provide the SUBRECIPIENT additional time to correct and cure the reimbursement request defect by providing additional supporting documentation. The period for curing

documentation defects for draws in a particular expenditure deadline cycle shall expire on the respective dates provided in Column D of Table 1 in this Exhibit. Shall the defect not be fully cured by the cure expirations date, the costs associated with the defect will be disallowed. In the event the disallowed costs result in the total reimbursement for the expenditure cycle falling short of the amount required for the meeting the cycle's progressive expenditure deadline amount as provided in EXHIBIT C, the CITY will recapture the amount of the expenditure shortfall for the cycle.

Accomplishment data defects must also be cured by the respective dates provided in Column D Table 1 in this Exhibit A. Accomplishment data defects not corrected by the applicable dates may result in the suspension of reimbursement request processing and the making of reimbursement payments until such time as the data defect is cured by the SUBRECIPIENT. In the event that a suspension results in the failure to achieve an expenditure deadline requirement, the CITY will recapture the entire amount associated with the expenditure deadline cycle.

EXHIBIT F
County Spending Plan for City
of Fresno ESG-CV 1

| Grant | Use | ESG-CV Award | | Expected Invoice Submission by May 31, 2021 for 4 Months Ending: | Expected Invoice Submission by June 30, 2021 for Month Ending: | Expected Invoice Submission by July 31, 2021 for Month Ending: | Expected Invoice Submission by August 31, 2021 for Month Ending: | Expected Invoice Submission by September 30, 2021 for Month Ending: | Expected Invoice Submission by October 31, 2021 for Month Ending: | Sum of Invoice Submissions for Meeting 20% Deadline (Sum of Column F thru Column K) |
|------------------------------|-----------------|-----------------|------------|--|--|---|--|---|---|--|
| | | | | 30-Apr-2021 | 31-May-2021 | 30-Jun-2021 | 31-Jul-2021 | 31-Aug-2021 | 30-Sep-2021 | |
| Initial Award | | \$ 1,998,334.50 | 20% Cycle | \$ 65,898 | \$ - | \$ 726,504 | \$ - | \$ - | \$ 179,693 | \$ 972,095 |
| 20% Shortfall | \$ - | | | Cummulative Expenditure \$ 65,898 | \$ 65,898.15 | \$ 792,401.70 | \$ 792,401.70 | \$ 792,401.70 | \$ 972,094.90 | \$ 972,094.90 |
| Adjusted Award - 20% Adjust. | \$ 1,998,334.50 | | | Cummulative % Expended 3.3% | 3.3% | 39.7% | 39.7% | 39.7% | 48.6% | 48.6% |
| 80% Shortfall | \$ - | | | 20% of Grant | | | | | | \$ 399,666.90 |
| Adjusted Award - 80% Adjust. | \$ 1,998,334.50 | | | 20% Cycle Surplus (Deficit) | | | | | | \$ 572,428.00 |
| 100% Shortfall Reduction | \$ - | | | Expected Invoice Submission by November 30, 2021 for Month Ending: | Expected Invoice Submission by December 31, 2021 for Month Ending: | Expected Invoice Submission by January 31, 2021 for Month Ending: | Expected Invoice Submission by February 28, 2021 for Month Ending: | Expected Invoice Submission by March 31, 2021 for Month Ending: | Expected Invoice Submission by April 30, 2021 for Month Ending: | Sum of Invoice Submissions for Meeting 80% Deadline (Sum of Column F thru Column K) |
| | | | | 31-Oct-2021 | 30-Nov-2021 | 31-Dec-2021 | 31-Jan-2022 | 28-Feb-2022 | 31-Mar-2022 | |
| Adjusted Grant Award | \$ 1,998,334.50 | | 80% Cycle | \$ - | \$ - | \$ 179,693.20 | \$ - | \$ - | \$ 624,392.20 | 804,085 |
| | | | | Cummulative Expenditure \$ 972,094.90 | \$ 972,094.90 | \$ 1,151,788.10 | \$ 1,151,788.10 | \$ 1,151,788.10 | \$ 1,776,180.30 | 1,776,180 |
| | | | | Cummulative % Expended 48.6% | 48.6% | 57.6% | 57.6% | 57.6% | 88.9% | 88.9% |
| | | | | 80 % of Adjusted Grant | | | | | | \$1,598,667.60 |
| | | | | 80% Cycle Surplus (Deficit) | | | | | | 177,512.70 |
| | | | | Expected Invoice Submission by May 31, 2022 for Month Ending: | Expected Invoice Submission by June 30, 2022 for Month Ending: | Expected Invoice Submission by July 31, 2022 for Month Ending: | Expected Invoice Submission by August 31, 2022 for Month Ending: | Expected Invoice Submission by September 30, 2022 for Month Ending: | Expected Invoice Submission by October 31, 2022 for Month Ending: | Sum of Invoice Submissions for Meeting 100% Deadline (Sum of Column F thru Column K) |
| | | | | 30-Apr-2022 | 31-May-2022 | 30-Jun-2022 | 31-Jul-2022 | 30-Aug-2022 | 30-Sep-2022 | |
| | | | 100% Cycle | \$ - | \$ - | \$ 222,154.20 | \$ - | \$ - | \$ - | \$ 222,154.20 |
| | | | | Cummulative Expenditure \$ 1,776,180.30 | \$ 1,776,180.30 | \$ 1,998,334.50 | \$ 1,998,334.50 | \$ 1,998,334.50 | \$ 1,998,334.50 | \$ 1,998,335 |
| | | | | Cummulative % Expended 88.9% | 88.9% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| | | | | 100% of Adjusted Grant | | | | | | \$ 1,998,334.50 |
| | | | | 100% Cycle Surplus (Deficit) | | | | | | \$ - |