

**COMMUNITY DEVELOPMENT BLOCK GRANT  
SUBRECIPIENT AGREEMENT  
BETWEEN THE CITY OF SAN LEANDRO  
AND  
FAMILY EMERGENCY SHELTER COALITION (FESCO)**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement") is made at San Leandro, California, as of [July 1, 2013](#), by and between the CITY OF SAN LEANDRO, a municipal corporation ("City") and FAMILY EMERGENCY SHELTER COALITION (FESCO), a California non-profit corporation ("Subrecipient").

**RECITALS**

A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations").

B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.

C. The Subrecipient proposes to provide various services to low/moderate income persons as set forth in Exhibit A (Scope of Work).

NOW, THEREFORE, the parties hereto agree as follows:

1.0 **TERM OF AGREEMENT.** Unless earlier terminated in accordance with Section 8.4 of this contract, this contract shall continue in force and effect until [June 30, 2014](#).

2.0 **SUBRECIPIENT OBLIGATIONS**

2.1 **Use of CDBG Funds.** Subrecipient hereby agrees to use the CDBG funds provided to Subrecipient solely for the project pursuant to all of the terms and conditions of this contract. The project is more particularly set forth in Exhibit "A" attached hereto and incorporated herein by reference. The CDBG funds shall be used solely to reimburse the actual expenses incurred by Subrecipient for the project as set forth in the "Budget" attached hereto as Exhibit "B" and incorporated herein by reference. Contract Officer may approve minor changes to the budget that do not exceed the maximum amount in paragraph 3.1 of this Agreement.

2.2 **Representation and Warranties.** Subrecipient hereby represents and warrants to the City as follows:

a. Subrecipient has read and is familiar with all of the terms and provisions of the Act and the regulations applicable to Subrecipient.

b. Subrecipient is a nonprofit organization permitted to receive CDBG funds under the Act and the regulations.

c. The use of the facility, the project, and the expenses to be reimbursed by the CDBG funds, as described in the budget, are permitted uses of CDBG funds under the Act and the regulations.

2.3 **Compliance with Law.** Subrecipient shall perform the project and operate the facility in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered, including, but not limited to the Act and the regulations. Particularly, Subrecipient shall comply with the requirements and standards of the following:

a. OMB Circular No. A-122 "Cost Principles for Non-Profit Organizations" or OMB Circular No. A-21 "Cost Principles for Educational Institutions," as applicable;

b. All Federal laws and regulations described in 24 CFR Part 84 and Subpart K of 24 CFR Part 570, including all affirmative action requirements set forth therein, but excluding the City's environmental responsibilities under 24 CFR Section 570.604 and the City's responsibility for initiating the review process under 24 CFR Part 52; and

c. If Subrecipient is a religious organization, as defined by the regulations, all conditions prescribed by HUD for the use of CDBG funds by religious organizations shall pertain.

**2.4 Licenses, Permits, Fees and Assessments.** Subrecipient shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the project and the operation of the facility.

## **2.5 Personnel and Participant Conditions.**

### **a. Civil Rights**

(1) Compliance. The Subrecipient agrees to comply with City and State civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

(2) Nondiscrimination. The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

(3) Land Covenants. This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, part I. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City of San Leandro and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

(4) Section 504. The Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 721) that prohibits discrimination against the handicapped in any federally assisted program. The City of San Leandro shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this contract.

b. Affirmative Action

(1) EO 11246. The Subrecipient, if applicable, will comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts. As specified in Executive Order 11246 and the implementing regulations, contractors, and subcontractors on federal or federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

(2) Women- and Minority-Owned Businesses (W/MBE). The Subrecipient will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by Subrecipients regarding their status as minority and female business enterprises in lieu of an independent investigation.

(3) Access to Records. The Subrecipient shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

(4) Notifications. The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) EEO/AA Statement. The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

(6) Subcontract Provisions. The Subrecipient will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Subrecipient or vendor.

c. Employment Restrictions

(1) Prohibited Activity. The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.

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

d. "Section 3" Clause

(1) Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract and binding upon the City of San Leandro, the Subrecipient and any sub-Subrecipients. Failure to fulfill these requirements shall subject the City of San Leandro, the Subrecipient and any sub-Subrecipients, their successors

and assigns, to those sanctions specified by the agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this agreement:

The work to be performed under this contract is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project..

The Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.

(2) Notifications. The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(3) Subcontracts. The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the sub-Subrecipient is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any sub-Subrecipient where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the sub-Subrecipient has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

**2.6 Environmental Requirements. Lead Based Paint.** In accordance with 24 CFR Part 570.608, the Subrecipient shall be prohibited from using lead-based paint in residential structures rehabilitated with Community Development Block Grant funds. Lead-based paint is any paint containing more than five-tenths of one percent (5/10 of 1%) lead by weight in the total non-volatile content of liquid paints or in the dried film of paint already applied.

**2.7 Further Responsibilities of Parties.** Both parties agree to use reasonable care and diligence to perform their respective obligations under this contract. Both parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this contract. Unless hereafter specified, neither party shall be responsible for the obligations of the other.

### **3.0 DISBURSEMENT OF FUNDS**

**3.1 Maximum Amount of CDBG Funds.** The maximum amount of CDBG funds to be provided to Subrecipient is \$13,000 in the form of a grant. Subrecipient hereby acknowledges that the City cannot guarantee that the CDBG funds will be received from HUD. The City's obligation to fund the work hereunder is limited to the availability of CDBG funds from HUD. If the CDBG funds are not forthcoming from HUD for any reason, the City shall not have any obligation to fund the work through any other source of funds.

**3.2 Maximum Amount of General Funds.** Not applicable.

**3.3 Termination of Fund Obligation.** The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Subrecipient for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Subrecipient shall maintain adequate logs and timesheets in order to verify costs incurred to date.

3.4 **Method of Payment- CDBG Funds.** Unless otherwise specified in Exhibit "A", not more frequently than monthly and at least quarterly, Subrecipient may submit to the Contract Officer an invoice, in a form acceptable to the City, setting forth the amounts actually expended by Subrecipient for the project; provided that said expenses are included in the budget (Exhibit "B") and performance standards have been met. Said invoice shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, and the total amount expended for each budget category to date. Said invoice shall be accompanied with such additional supporting information as requested by the City, including, but not limited to, paid receipts for each expense. To the extent the CDBG funds actually have been received from HUD, the City shall pay Subrecipient for all expenses stated on the invoice that are approved by City pursuant to this contract no later than the thirtieth day after the invoice is received.

3.5 **Method of Payment - General Funds, if applicable.** City shall pay Subrecipient an amount not to exceed the total sum noted in Section 3.2 for services to be performed. The City shall make monthly payments for services satisfactorily performed. City shall not pay any additional sum for any expense or cost whatsoever incurred by the Subrecipient in rendering services pursuant to this Agreement.

3.6 **Program Income.** Any program income, as such term is defined in the regulations, received by Subrecipient shall be retained by Subrecipient. The program income received by Subrecipient shall solely be used for the project or for the purpose of operating the facility. All provisions of this contract shall apply to activities funded by program income. All program income shall be expended by Subrecipient before the City is obligated to advance any other CDBG funds to Subrecipient under this agreement.

3.7 **Separation of Funds.** The Subrecipient shall certify that the Subrecipient's financial system is in accordance with the standards specified in OMB Circular 110, or 24 CFR Part 84.

3.8 **Indirect Costs.** If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate City of San Leandro share of administrative costs and shall submit such plan to the City of San Leandro for approval.

#### 4.0 **PERFORMANCE SCHEDULE**

4.1 **Schedule of Performance.** Subrecipient shall commence, prosecute and complete the project within the time periods established in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by this reference.

4.2 **Reversion of Assets.** Upon the expiration or sooner termination of this contract, Subrecipient shall (i) transfer to the City any and all CDBG funds and program income on hand (ii) any accounts receivable attributable to the use of CDBG funds or program income; and (iii) if any CDBG funds or program income was used by Subrecipient to improve or acquire real property and said CDBG funds or program income was in excess of Twenty-Five Thousand Dollars (\$25,000), Subrecipient shall either (a) use said real property to meet one of the national objectives specified in 24 CFR Section 570.208 for a period of five (5) years after the termination or sooner expiration of this contract or (b) dispose of the real property and reimburse the City in an amount (together with any amounts previously repaid to the City) that is equal to the fair market value of the real property times a fraction, the numerator of which is equal to the amount of CDBG funds and/or other program income used to acquire or improve the property and denominator of which is equal to the fair market value of the real property immediately after the real property was acquired or improved with said funds.

#### 5.0 **COORDINATION OF WORK**

5.1 **Representative of Subrecipient.** The Executive Director is hereby designated as being the representative of Subrecipient authorized to act in its behalf with respect to this contract and make all decisions in connection therewith.

5.2 **Contract Officer.** Contract Officer shall be the City's CDBG Manager or such person as may be designated by the City Manager. It shall be the Subrecipient's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Subrecipient shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this contract.

5.3 **Prohibition Against Subcontracting or Assignment.** Neither this contract nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Subrecipient, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this contract shall be void. No approved transfer shall release the Subrecipient or any surety of Subrecipient of any liability hereunder without the express consent of City.

5.4 **Independent Contractor.** Neither the City nor any of its employees shall have any control over the manner, mode or means by which Subrecipient, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Subrecipient's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Subrecipient shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with the role. Subrecipient shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Subrecipient in its business or otherwise of a joint venture or a member of any joint enterprise with Subrecipient.

5.5 **Conflict of Interest.** The Subrecipient agrees to abide by the provisions of 24 CFR 570.611 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. The Subrecipient further covenants that in the performance of this contract no persons having such a financial interest shall be employed or retained by the Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, Subrecipient, officer, or elected official or appointed official of the City of San Leandro, or of any designated public agencies or subrecipients which are receiving funds under the CDBG Entitlement program.

5.6 **Lobbying.** The Subrecipient hereby certifies that:

a. No Federal appropriated funds have been paid or 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 co-operative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

d. Lobbying Certification - Paragraph d

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1353, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**6.0 INSURANCE REQUIREMENTS**

6.1 **Insurance.** Before beginning any work under this Agreement, Subrecipient, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Subrecipient and its agents, representatives, employees, and subcontractors. Subrecipient shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Subrecipient shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Subrecipient's bid. Subrecipient shall not allow any subcontractor to commence work on any subcontract until Subrecipient has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

6.2 **Workers' Compensation.** Subrecipient shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Subrecipient. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Subrecipient may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Subrecipient, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**6.3 Commercial General and Automobile Liability Insurance.**

a. **General requirements.** Subrecipient, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

b. Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

c. Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

(1) City and its officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Subrecipient, including the insured's general supervision of Subrecipient; products and completed operations of Subrecipient; premises owned, occupied, or used by Subrecipient; and automobiles owned, leased, or used by the Subrecipient. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

(2) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

(3) An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

(4) Any failure of SUBRECIPIENT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

(5) An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

## 7.0 ADMINISTRATIVE REQUIREMENTS

### 7.1 Financial Management.

a. Accounting Standards. The Subrecipient agrees to comply with 24 CFR Part 84 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.

b. Cost Principles. The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable for all costs incurred whether charged on a direct or indirect basis.

### 7.2 Documentation and Record-Keeping

a. Records to be Maintained. The Subrecipient shall maintain all records required by the Federal regulations specific in 24 CFR Part 570.506, and that are pertinent to the activities to be funded under this Agreement. 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 one of the National Objectives of the CDBG program set forth in 24 CFR 570.208;
- (3) Records required determining the eligibility of activities;
- (4) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- (5) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- (6) Financial records as required by 24 CFR Part 570.502, and Part 84; and
- (7) Other records necessary to document compliance with Subpart K of 24 CFR 570.

b. Retention. The Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of four (4) years after the termination of all activities funded under this agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this contract shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four years after he/she has received final payment.



7.3 **Client Data.** The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City of San Leandro monitors or their designees for review upon request.

7.4 **Disclosure.** The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the City of San Leandro's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

7.5 **Property Records.** The Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8).

7.6 **National Objectives.** The Subrecipient agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this contract meet one or more of the CDBG program's national objectives: (a) benefit low/moderate income persons, (b) aid in the prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).

7.7 **Performance Monitoring.** The City of San Leandro will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the City of San Leandro will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City of San Leandro, contract suspension or termination procedures will be initiated.

7.8 **Close-Outs.** Subrecipient obligation to the City of San Leandro shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City of San Leandro), and determining the custodianship of records.

7.9 **Audits and Inspections.** All Subrecipient records with respect to any matters covered by this agreement shall be made available to the City of San Leandro, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City of San Leandro or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Subrecipient audits.

## 8.0 **ENFORCEMENT OF CONTRACT**

8.1 **Applicable Law.** This contract shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California and the United States, as applicable. Legal actions concerning any dispute, claim or matter arising out of or in relation to this contract shall be instituted in the Superior Court of the County of Alameda, State of California, the United States District Court for the Northern District of California, or any other appropriate court in Alameda County, and Subrecipient covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 **Disputes.** In the event of any dispute arising under this contract, the injured party shall notify the insuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within thirty (30) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Notwithstanding the foregoing, the City may suspend any further payment of CDBG funds until Subrecipient is in compliance with this contract. Compliance with the provisions of this Section shall be a condition precedent to termination of this contract for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the depute is not cured.

8.3 **Remedies Upon Default by Subrecipient.** In addition to any other rights or remedies available at law or in equity, if Subrecipient fails to fulfill its obligations under this contract, City may, after compliance with the provisions of Section 8.2:

- a. Temporarily withhold payment of CDBG funds pending correction of the default by Subrecipient;
- b. Refuse to advance all or any part of the CDBG funds for the project and reallocate said funds to another activity;
- c. Wholly or partially suspend or terminate the award and this contract; and;
- d. Withhold further awards for the project and/or the facility; and
- e. Require Subrecipient to repay any CDBG funds that the City determines were not expended in compliance with the requirements of this contract, the Act or the regulations.

8.4 **Termination for Convenience.** This contract may be terminated for convenience as provided in 24 CFR Section 85.44.

8.5 **Waiver.** No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this contract.

8.6 **Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this contract, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.7 **Legal Action.** In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to complete specific performance of this contract, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of the contract.

8.8 **Attorneys' Fees.** If either party to this contract is required to initiate or defend or made a party to any action or proceeding in any way connected with this contract, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

## 9.0 CITY OFFICERS AND EMPLOYEES

9.1 **Non-liability of City Officers and Employees.** No officer or employee of the City shall be personally liable to the Subrecipient, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Subrecipient or to its successor, or for breach of any obligation of the terms of this contract.

9.2 **Conflict of Interest.** No officer or employee of the City shall have any financial interest, direct or indirect, in this contract nor shall any such officer or employee participate in any decision relating to the contract which affects his/her financial interest or the financial interest of any corporation, partnership or association in which s/he is, directly or indirectly, interested, in violation of any State statute or regulation. The Subrecipient warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this contract.

## 10.0 MISCELLANEOUS PROVISIONS

10.1 **Notice.** Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail

To the City: City of San Leandro  
835 E. 14<sup>th</sup> Street  
San Leandro, California 94577  
Attention: Planning & Housing Manager

To the Subrecipient: Family Emergency Shelter Coalition  
21455 Birch Street, #5  
Hayward, CA 94541  
Attention: Executive Director

at his/her address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

10.2 **Interpretation.** The terms of this contract shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this contract or any other rule of construction which might otherwise apply.

10.3 **Integration; Amendment.** It is understood that there are no oral agreements between the parties hereto affecting this contract and this contract supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this contract. This contract may be amended at any time by the mutual consent of the parties by an instrument in writing.

10.4 **Severability.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this contract shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this contract that are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this contract meaningless.

10.5 **Corporate Authority.** The persons executing this contract on behalf of the parties hereby warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this contract on behalf of said party, (iii) by so executing this contract, such party is formally bound to the provisions of this contract, and, (iv) the entering into this contract does not violate any provision of any other agreement to which said party is bound.

CITY OF SAN LEANDRO

FAMILY EMERGENCY SHELTER COALITION (FESCO)

\_\_\_\_\_  
Chris Zapata, City Manager

\_\_\_\_\_  
Gay McDaniel, Executive Director

Date: \_\_\_\_\_, 2013

Date: \_\_\_\_\_, 2013

Attest:

Approved as to Budget:

\_\_\_\_\_  
Marian Handa, City Clerk

\_\_\_\_\_  
David Baum, Finance Director

Approved as to Form:

Date: \_\_\_\_\_, 2013

\_\_\_\_\_  
Rich Pio Roda, City Attorney

**Account No.: 165-43-235-5120**

Date: \_\_\_\_\_, 2013

# EXHIBIT A

## SCOPE OF WORK

Term of Contract: **July 1, 2013 – June 30, 2014**

Agency: Family Emergency Shelter Coalition (FESCO)

Address: 21455 Birch Street, #5  
Hayward, CA 94541

Contact Person: Gay McDaniel, Executive Director

Phone: 510-886-5473

Project Name: Les Marquis Emergency Shelter for Homeless Families

## PROJECT GOALS AND OBJECTIVES

FESCO will provide emergency shelter, food and supportive services to extremely low-income homeless families, moving them from crisis toward self-sufficiency and permanent housing. The Les Marquis Shelter will provide a safe and supportive environment for homeless families while they stabilize, secure employment and/or income, and have access to mental health counseling, life skills classes, housing assistance and other resources to help achieve their permanent housing goals.

## MAJOR ACTIVITIES

The Les Marquis Shelter is a 22-bed emergency shelter that is open 24/7, 365 days a year providing safe, warm housing and meals, case management, life skills classes, children's activities, and linkage to independent housing, benefits acquisition, and other services such as healthcare and childcare.

## PERFORMANCE MEASURES

SUBRECIPIENT SHALL, FOR THE TERM OF THE CONTRACT

The Les Marquis Shelter will provide 24-hour emergency services to homeless families including shelter; three meals a day; case management and life skills classes; mental health counseling; access to health care referrals; children's activities and parenting skills classes, and will achieve the following performance measures:

1. At least 169 participants will be served
2. At least 17,438 meals will be provided.
3. At least 6,500 Bednights will be provided.

## TIMELINES

By end of 1<sup>st</sup> Quarter, September 30, 2013, FESCO will have accomplished:

1. Participants served: 46
2. Meals provided: 4,787
3. Bednights provided: 1,755

By end of 2<sup>nd</sup> Quarter, December 31, 2013, FESCO will have accomplished:

1. Participants served: 37                      83 cumulative total
2. Meals provided: 3,797                      8,584 cumulative total
3. Bednights provided: 1,430                      3,185 cumulative total

By end of 3<sup>rd</sup> Quarter, March 31, 2014, FESCO will have accomplished:

1. Participants served: 42                      125 cumulative total
2. Meals provided: 4,316                      12,900 cumulative total
3. Bednights provided: 1,625                      4,810 cumulative total

By end of 4<sup>th</sup> Quarter, June 30, 2014, FESCO will have accomplished:

1. Participants served: 44                      169 cumulative total
2. Meals provided: 4,538                      17,438 cumulative total
3. Bednights provided: 1,690                      6,500 cumulative total

## REPORTS AND MISCELLANEOUS

1. Agency must submit the City-provided Quarterly Reports within fifteen (15) days of the end of the each quarter. The Quarterly Reports shall reflect the number of persons served, and shall also include a narrative section. The reports shall be submitted even if there are no specific numbers to report, and the narrative report should describe why no specific numbers are reported.
2. To ensure timely expenditure of HUD funds, Agency must submit monthly reimbursement claims using the City's invoice or comparable form with documentation of claim including copies of time sheets (denoting specific hours for CDBG work performed), payroll stubs, DE3 or employment or contract letter for personnel costs, invoices or billings.
3. Housing Services Division staff will conduct CDBG desk monitoring on an ongoing basis based upon the City's CDBG monitoring plan.
4. Human Services staff and members of the Human Services Commission (HSC) and Housing Services Division staff will conduct at least one (1) monitoring site visit per year.

## EXHIBIT B

<b>BUDGET</b>	
<b>Family Emergency Shelter Coalition (FESCO)</b>	
City of San Leandro: <b>CDBG FY 2013-2014</b>	
Shelter Operating Costs to support 6,500 bednights, including expenses such as repairs & maintenance, household items, insurance, office supplies, equipment rental, and IT support.	\$13,000
<b>TOTAL BUDGETED</b>	<b>\$13,000</b>
TOTAL AMOUNT AWARDED	\$13,000
BALANCE	\$ -