CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT TO PROVIDE EMERGENCY SHELTER SERVICES

This Agreement to Provide Emergency Shelter Services, hereinafter referred to as the "Agreement", is made and effective July 1, 2011, by and between the City of Fresno, a municipal corporation, acting through its Housing & Community Development Division, hereinafter referred to as the "City", and Turning Point of Central California, a California nonprofit corporation qualified to do business in good standing in the State of California, hereinafter referred to as the "Provider".

RECITALS

WHEREAS, in accordance with and in pursuit of the Emergency Shelter Grants program contained in subtitle B of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11371-11378) and implementing federal regulations, policies and guidelines including without limitation Code of Federal Regulations Title 24, hereinafter referred to as the "Act", incorporated herein and available from City, the U.S. Department of Housing and Urban Development, hereinafter HUD, makes available Emergency Shelter Grant funding, hereinafter referred to as "ESG Funding", to eligible HUD recipients, for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain operating expenses and essential services in connection with emergency shelters for the homeless, and for homeless prevention activities, in order to enable homeless individuals and families to move toward independent living, and preventing homelessness, hereinafter referred collectively referred to as the "Services"; and

WHEREAS, City is an eligible HUD recipient and has adopted a Consolidated Plan ("Plan") that identifies a need to provide assistance to the homeless and an Annual Action Plan that provided ESG Funding for the Services; and

WHEREAS, during the term hereof City anticipates receipt and allocation of ESG Funding, which Funding shall be the sole source of funding for the Services hereunder; and

WHEREAS, City desires to obtain from Provider, and Provider desires to provide to City, in full compliance with the Act and all other applicable federal, state and local laws, rules and regulations, the Services more specifically described in section 2 of this Agreement; and

WHEREAS, Provider, variously engaged in the business of providing the Services and/or comparable services, and is fully competent, authorized, and able to enter into this Agreement and perform the Services, holding any and all implicated licenses, permits and/or approvals; and

WHEREAS, Provider does and shall provide such Services on a contract basis, as an independent contractor, possessed of and exercising the complete right to control the means of accomplishing said Services; and

WHEREAS, performance of the Services by Provider will be of benefit to the City and in the public interest.

NOW THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Term.

1.1 The term of this Agreement and the ESG Funding grant hereunder shall be for the period commencing on the date first set forth above and ending on June 30, 2012, unless terminated earlier as herein below provided.

2. Scope of Work. Provider agrees to perform the following Services.

2.1 Provide the following services (i) through (v) related to Provider's externally funded administration, management and operation of (an) emergency shelter(s) that at all times hereunder shall provide in the aggregate a minimum of 2,646 one night shelter units/quarter and a minimum of 7,938 meals units/quarter, to total 10,584 one night shelter units and 31,752 meal units during the entire term of the Agreement, to homeless individuals and others in need of said Services:

(i) Utilities;
(ii) Insurance;
(iii) Maintenance and repair activities;
(iv) Third party provided pest control, alarm/security/guard and laundry services, and such other third party provided services as may be prior approved City; and
(v) Security systems

2.2 Upon the written request of Provider demonstrating changed circumstances beyond the reasonable control of the Provider, City in its absolute discretion, may authorize deviations from above section 2.1, in the form of a written addendum hereto.

2.3 The program(s) to be provided by Provider under this Agreement are identified as: Shelter services

2.4 Provider agrees to provide the shelter to homeless individuals at the following locations: 1642 "L" Street, Fresno, CA 93721

The City in its absolute discretion may approve in writing additional locations where ESG funds may be used to support the above listed program(s) being provided by the Provider.

3. City's Disbursement of ESG Funding to Provider.

3.1 City shall use ESG Funding to reimburse Provider, in arrears upon Provider's satisfactory performance of section 2.1 (i-v) Services hereunder, in a sum not to exceed in the aggregate Twenty Five Thousand, Four Hundred Sixty Eight Dollars ($25,468.00) during the term hereof, according to the following schedule:

3.1.1 Upon invoice to City, payable in City's normal course of business, provided that ESG Funding disbursements hereunder shall not exceed the base sum of Six Thousand, Three Hundred Sixty Seven Dollars ($6,367.00) in any quarter, adjusted for service unit shortfall as provided in this section 3.1.1, absent the written consent of the City upon unusual circumstances supported by vendor, and further provided that City's receipt of paid invoices, supporting accounts and records together with documentation for matching funds and the Homeless Services Report, hereto as Exhibit "A", incorporated herein, for each preceding three (3) month period shall all be express conditions precedent to any payment obligation in City. If provider fails to achieve the Section 2.1 minimum service units in any quarter (after crediting Provider with the total surplus units accrued from prior quarter(s), if any), and without limitation or waiver of other rights/remedies available to City, the City may withhold from that quarterly disbursement a non-interest earning sum representing the percentage service unit shortfall. Sums withheld will be paid with the next due quarterly disbursement if Provider demonstrates to the City's satisfaction that the shortfall has been made up. If the entire shortfall is not made up by the end of the term of this Agreement, the aggregate withheld amount shall be forfeited by Provider and shall revert to City's ESG Funding accounts free of any obligation under this Agreement.

3.2 Except to the extent expressly provided for herein, all costs/expenses incurred by Provider hereunder shall be the sole responsibility and liability of Provider.

3.3 All funds are paid contingent upon Provider's continuous compliance with all applicable, uniform administrative requirements, program regulations, recapture and reversion requirements, set out in the Act. Any unearned or recaptured ESG Funding shall be returned to the City within thirty (30) days of the earlier of termination of this Agreement or determination of recapture. Any interest earned or received by Provider thereon shall be promptly remitted to the City.

3.4 Provider acknowledges and agrees that the ESG Funding hereunder is subject to the control of HUD and may be encumbered, withdrawn, or otherwise made unavailable to the City (whether earned or promised to, or by, the Provider). The Provider shall not be paid such funds unless and until they are made available for payment to the City by HUD. No other funds owned or controlled by the City shall be obligated under this Agreement unless specifically approved and permitted by the Fresno City Council.

Nothing herein constitutes a pledging or obligating of City funds, it's General Fund, or any real and personal property taxes, sales taxes or any other tax revenues. 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 9 below.

3.5 All Provider invoices and substantiating materials supporting the final payment must be received within forty-five (45) calendar days following the end of the City fiscal year in which earned unless the City gives its written consent otherwise.

4. Matching Funds Requirements of Provider.

4.1 Provider agrees to match all ESG Funding disbursed to it by City on a dollar for dollar basis. Donated funds, material and labor may be used as matching funds. Time contributed by volunteers shall be calculated at the rate of $5 per hour. Provider shall determine the value of donated material or building space using a method based on fair market value. Other Federal funds may be used as matching funds unless expressly prohibited by law or contract. Unless otherwise provided by applicable law or contract, matching funds shall be applied in furtherance of the Services.

5. Disposition of Program Income.

5.1 Absent the City's written consent, any program income generated hereunder shall be used to reduce the City's reimbursement obligations hereunder, or in the absence thereof promptly remitted entirely to the City.

5.2 "Program income" for the specific purpose of this Agreement shall be as defined in the Act. Unless otherwise provided for in the Act, program income shall include any and all gross income earned by or accruing to Provider in its pursuit hereof provided that the term program income does not include rebates, credits, discounts or refunds realized by Provider in its pursuit hereof.

6. Use of funds.

6.1 The Provider shall use the funds provided by the City solely for the purpose of providing services related to Providers' externally funded administration, management and operation of (an) emergency shelter.

7. Availability of ESG Funding.

7.1 Provider acknowledges and agrees that the ESG Funding hereunder is subject to the control of HUD and may be encumbered, withdrawn, or otherwise made unavailable to the City (whether earned or promised to, or by, the Provider). The Provider shall not be paid such funds unless and until they are made available for payment to the City by HUD. No other funds owned or controlled by the City shall be obligated under this Agreement unless specifically approved and permitted by the Fresno City Council.

Nothing herein constitutes a pledging or obligating of City funds, it's General Fund, or any real and personal property taxes, sales taxes or any other tax revenues.

8. Default.

8.1 The parties agree that each of the following shall constitute an "Event of Default" for purposes of this Agreement:

8.1.1 Provider's use of ESG Funding for other than in pursuit of the Services.

8.1.2 Provider's failure to obtain and maintain the insurance coverage required under this Agreement.

8.1.3 Except as otherwise provided in this Agreement, the failure of Provider to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following:

(i) Any representation, warranty, or certificate given or furnished by or on behalf of Provider shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that Provider concealed or failed to disclose a material fact to City, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to Provider's inadvertence, Provider shall have a thirty (30) day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect.

(ii) Provider shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within fourteen (14) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within fourteen (14) days.

(iii) Provider's failure, inability or admission in writing of its inability to pay its debts as they become due or Provider's assignment for the benefit of creditors.

(iv) A receiver, trustee, or liquidator shall be appointed for Provider or any substantial part of Provider's assets or properties, and not be removed within ten (10) days.

(v) Provider's failure to provide the minimum and total service units set out in Section 2.1 of this agreement.

(vi) Provider's breach of any other material condition, covenant, warranty, promise or representation contained in this Agreement not otherwise identified within this section 8.

8.2 City shall give written notice to Provider of any Event of Default by specifying (1) the nature of the event or deficiency giving rise to the default, (2) the action required to cure the deficiency, if any action to cure is possible, and (3) a date, which shall not be less than 30 calendar days from the date of the notice, by which such deficiency must be cured, provided, however that if such failure cannot be remedied in such time, Provider shall have an additional thirty (30) days to remedy such failure so long as Provider is diligently and in good faith pursuing such remedy.

8.3 Upon the happening of an Event of Default by Provider and a failure to cure said Event of Default within the time specified in the notice of Event of Default, City's obligation to disburse ESG Funding shall terminate, and City may also at its option and without notice institute any action, suit, or other proceeding in law, in equity or otherwise, which it shall deem necessary or proper for the protection of its interests and may without limitation proceed with any or all of the following remedies in any order or combination City may choose in its sole discretion:

8.3.1 Terminate this Agreement immediately upon written notice to Provider, in which event all unearned and improperly applied ESG Funds disbursed to Provider by City shall be returned to/recaptured by City;

8.3.2 Bring an action in equitable relief (1) seeking specific performance by Provider of the terms and conditions of this Agreement, and/or (2) enjoining, abating or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

8.3.3 Pursue any other remedy allowed at law or in equity or under this Agreement.

9. Termination.

9.1 This Agreement shall terminate upon the earlier of: notice by City of non-availability/non-appropriation of ESG Funding; notice of uncured default; or expiration. Any such termination shall not relieve a party of obligations due and owing at the time of termination.

9.2 Immediately upon any termination hereof Provider shall return to City any and all unearned payments (including all interest, accruals and gains thereon) and all properties and materials in the possession of Provider at the time of termination that are owned by the City.

9.3 In the event of termination due to failure of Provider of any of its employees to substantially perform in accordance with the terms of this Agreement, City may withhold

an amount that would otherwise be payable as an offset to, but not in excess of, City's damages caused by such failure.

9.4 In the event of any termination of this Agreement, either party may exercise any right, remedy (in law or equity), or privilege which may be available to it under this Agreement and applicable laws of the State of California or any other applicable law. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

9.5 Notwithstanding the foregoing and without waiver or limitation, in accordance with the Act including 24 CFR 85.43, suspension or termination of this Agreement may occur if the Provider materially fails to comply with any term hereof, and the ESG Funding may be terminated for convenience in accordance with 24 CFR 85.44.

9.6 Those provisions of this Agreement expressly surviving the termination of this Agreement shall so survive.

10. On-Site Monitoring.

10.1 Authorized representatives of HUD and/or the City shall have the right to monitor the Provider's performance under this Agreement. Such monitoring may include inspection activities, review of records, and attendance at meetings:

10.1.1 City shall monitor the services and performance of Provider under this Agreement in order to determine to the best possible degree to which the program is successful and whether Provider's performance is in conformance with this Agreement. Provider shall reasonably make its facilities, books, records, reports and accounts available for City's inspection in pursuit hereof.

10.1.2 This section 10 shall survive termination or expiration of this Agreement.

11. Records, Reports, Inspection and Audit.

11.1 Provider shall be accountable to HUD and the City for all ESG Funding disbursed to Provider pursuant to the Agreement. HUD and the City shall have the right at all reasonable times to inspect or perform an audit, in accordance with this Section 11, of Provider's books, records and other documents pertaining to the Services or this Agreement and for up to five (5) years after the expiration or termination of this Agreement. Provider will maintain separate and segregated books and records for the Services using generally accepted accounting principles. Provider agrees to maintain books, records and other documents that accurately and fully show the date, amount, purpose and payee of all expenditures reimbursed from ESG Funding and to keep all invoices, receipts and other documents related to expenditures reimbursed from ESG Funding for not less than five (5) years after the expiration or earlier termination of the Agreement. Books, records and other documents must be kept accurate and current.

For purposes of this section, "books, records and documents" include, without limitation, plans, drawings, specifications, ledgers, journals, statements, contracts / agreements, funding information, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda and electronically stored versions of the foregoing:

11.1.1 Provider agree to comply with all applicable requirements of the Office of Management and Budget Circular A-122, "Cost Principles for Non-Profit Organizations"; OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations", including the provision of a single audit (generally applicable where funding from all federal sources in any fiscal year exceeds $500,000), and to such extent shall submit to the City any applicable auditor's reports and audited financial statements no later than three (3) months after the Provider's fiscal year end.

11.2 Provider shall comply with applicable portions of 24 CFR Part 110 "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations".

11.3 Provider shall be responsible for determining the applicability of the foregoing.

11.4 All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement, and they shall be clearly identified and readily accessible.

11.5 Provider, at such times and in such forms as City and HUD may require, shall furnish to City and HUD such statements, records, reports, data, annual reports, performance reports and information, as City may reasonably request, pertaining to matters covered by this Agreement.

11.6 Provider is to prepare written financial statements, and completed Homeless Services Reports, each in the form attached hereto as Exhibit "A", incorporated herein, each covering matters pertaining to the Services, to be submitted to City no later than the thirtieth (30th) of the month following the end of each quarter hereunder for the duration hereof, absent City's prior written consent in cases of unusual circumstances as determined in the sole discretion of the City.

11.7 Any duly authorized representative of HUD and City shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all books of account, records, and other documents of Provider relating to the Services for a period of five (5) years after the expiration or termination hereof. Provider shall cooperate fully with HUD and City in connection with any interim or final audit relating to the ESG Funding and the Services.

11.8 The Provider is required to participate in the Fresno Madera Continuum of Care (FMCoC). Participation is defined as attendance at a minimum of 75% of all FMCoC Director's meetings.

11.9 The Provider is required to collect and report client-level data in a database comparable to the local HMIS run by the Housing Authorities of the City and County of Fresno through a Memorandum of Understanding with the FMCoC or a data base that complies with any special requirements which may be developed by HUD for legal services or domestic violence victim service providers as pre-approved by the City. Reporting in a database comparable to HMIS is a requirement of ESG funding. The comparable database will be maintained by the Provider and used to collect data and report on outputs and outcomes as required by HUD. Provider is required to enter all client intakes, provide regular updates and exit all clients once services are completed. As applicable, Provider must enter the following information in the comparable database for federal reporting purposes:

1) Name
2) Social Security Number
3) Date of Birth
4) Race
5) Ethnicity
6) Gender
7) Veteran Status
8) Disabling Condition
9) Residence Prior to Program Entry
10) Zip Code of Last Permanent Address
11) Housing Status
12) Program Entry Date
13) Program Exit Date
14) Personal Identification Number
15) Household Identification Number
16) Income and Sources
17) Non-Case Benefits
18) Destination (where client will stay upon exit)
19) Financial Services Provide (if any)
20) Housing Relocation & Stabilization Services Provided (if any)

11.10 City shall provide full reporting requirements as required by HUD, under separate documentation for all providers. If Provider is a legal services or domestic violence victim services provider, and requires client-level information to remain confidential, they will be required to establish a comparable client-level database internal to its organization (e.g. no identifying data shared with the HMIS or the CITY and will provide only aggregate data to the CITY as required). Provider will work with the HMIS administering agency, as an agent of the FMCoC, to determine that the alternative database meets the standards for comparable client-level databases, including

compliance with the HMIS Data and Technical Standards which are acceptable to HUD and the City.

11.11 All data elements specified above in 11.9 must be recorded for each ESG Program in the HMIS and the fields needed to correctly generate the performance reports are required to be collected in the comparable database.

11.12 The Provider is required to provide housing unit and client data to the City of Fresno, or designee, to include in the Point in Time survey as administered by the Fresno-Madera Continuum of Care and as required by the HEARTH Act of 2009.

11.13 This section 11 shall survive termination or expiration of this Agreement.

12. Other Federal Requirements.

12.1 Provider warrants, covenants and agrees, for itself and its contractors and subcontractors of all tiers, that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 CFR Part 35 and 24 CFR 982.401(j). In this regard Provider shall be responsible for all inspection, testing and abatement activities.

12.1.1 The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856) and implementing regulations at 24 CFR Part 35. In addition, the following requirements relating to inspection and abatement of defective lead-based paint surfaces must be satisfied: (1) Treatment of defective paint surfaces must be performed before final inspection and approval of the renovation, rehabilitation or conversion activity under this part; and (2) Appropriate action must be taken to protect shelter occupants from the hazards associated with lead-based paint abatement procedures.

12.2 The Provider agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulation 24 CFR Part 8.

12.3 In addition to the Federal requirements set forth in 24 CFR Part 5, use of emergency shelter grant amounts must comply with the following requirements: (a) Nondiscrimination and equal opportunity. The nondiscrimination and equal opportunity requirements at 24 CFR Part 5 are modified as follows:

12.3.1 Rehabilitation Act requirements. HUD's regulations at 24 CFR Part 8 implement section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). For purposes of the emergency shelter grants program, the term "dwelling units" in 24 CFR Part 8 shall include sleeping accommodations.

12.3.2 Provider shall make known that use of the facilities and Services is available to all on a nondiscriminatory basis. If the procedures that the Provider intends to use to make known the availability of the facilities and Services are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for such facilities and Services, the Provider must establish additional procedures that will ensure that such persons are made aware of the facilities and Services. The Provider must also adopt procedures which will make available to interested persons information concerning the location of Services and facilities that are accessible to persons with disabilities.

12.3.3 The policies, guidelines, and requirements of 24 CFR Part 85 (codified pursuant to OMB Circular No. A-102) and OMB Circular No. A-87, as they relate to the acceptance and use of ESG Funding by City, and Nos. A-110 and A-122 as they relate to the acceptance and use of emergency shelter grant amounts by private nonprofit organizations.

12.4 The Provider will be responsible for all aspects Project contract award and management including the advertising for bids and shall award the contract to the lowest responsible and responsible bidder. The Provider shall verify with the Labor Relations and Equal Opportunity Division of the U.S. Department of Housing & Urban Development (HUD) Area Office that the low bidder has not been debarred or suspended from participating in federal projects.

12.5 Provider warrants, covenants and agrees that it shall perform the Services in a manner that is free from religious influences and that it shall not engage in any prohibited activities described in 24 CFR 576.23. Without limitation, Provider shall not unlawfully discriminate on the basis of religion and shall not provide religious instruction or counseling, conduct religious services or worship, engage in religious proselytizing, or exert other religious influence in pursuit hereof. Subject to the foregoing, Provider does not intend to utilize ESG Funding to construct, rehabilitate or convert facilities owned primarily by religious organizations or to assist primarily religious organizations in acquiring or leasing facilities to the extent prohibited in 24 CFR 576.23.

12.6 Provider shall perform the Services in compliance with, and not to cause or permit the Services to be in violation of, any existing or future environmental law, rule, regulation, ordinance, or statute. Provider agrees that, if City has reasonable grounds to suspect any such violation, Provider shall be entitled to thirty (30) days notice and opportunity to cure such violation. If the suspected violation is not cured, City shall have the right to retain an independent consultant to inspect and test the subject facilities for such violation. If a violation is discovered, Provider shall pay for the cost of the independent consultant.

12.7 The OMB Circulars referenced in this Agreement are available at the Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

13. Relocation.

13.1 Provider shall assure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of this Project and the Services rendered in pursuit thereof.

13.2 A displaced person must be provided relocation assistance at the levels described in, and in accordance with, 49 CFR Part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

14. Further Assurances.

14.1 This Agreement, when executed and delivered, shall constitute the legal, valid, and binding obligations of Provider enforceable against Provider in accordance with its respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws of general applicability affecting the enforcement of creditors' rights generally and (b) the application of general principles of equity without the joiner of any other party.

14.2 Provider represents and warrants as of the date hereof that Provider has obtained and, to the best of Provider's knowledge, is in compliance with all federal, state, and local governmental reviews, consents, authorizations, approvals, and licenses presently required by law to be obtained by Provider for the Services as of the date hereof.

14.3 In the performance of this Agreement, Provider shall promptly and faithfully comply with, conform to and obey the Act and all amendments thereto, and shall maintain all facilities hereunder in compliance with building, health and safety codes.

14.4 Provider shall be solely responsible and liable for any recapture or repayment obligation imposed by HUD due to any act or omission of Provider in pursuit hereof.

14.5 Provider acknowledges that Provider, not the City, is responsible for determining applicability of and compliance with the Act and all other applicable local, state, and federal laws including, but not limited to, any applicable provisions of the California Labor Code, Public Contract Code, and Government Code. The City makes no express or implied representation as to the applicability or inapplicability of any such laws to this Agreement or to the parties' respective rights or obligations hereunder including, but not limited to, competitive bidding, prevailing wage subcontractor listing, or similar or different matters. Provider further acknowledges that the City shall not be liable or responsible at law or in equity for any failure by Provider to comply with any such laws, regardless of whether the City knew or should have known of the need for such compliance, or whether the City failed to notify Provider of the need for such compliance.

14.6 Provider agrees to comply with the City's Fair Employment Practices and shall not employ discriminatory practices in the provision of the Services, employment of personnel, or in any other respect on the basis of race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a veteran with disabilities or veteran of the Vietnam era, medical condition, or physical or mental disability. During the performance of this Agreement, Provider agrees as follows:

14.6.1 Provider will comply with all laws and regulations, as applicable. No person in the United States shall, on the grounds of race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

14.6.2 Provider will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Provider shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

14.6.3 Provider will, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability.

14.6.4 Provider 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 advising such labor union or workers' representatives of Provider's commitment under this section 14 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

15. Insurance.

15.1 Throughout the life of this Agreement, the Provider shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or (ii) authorized by the City's Risk Manager. The following policies of insurance are required:
(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than $1,000,000 per occurrence for bodily injury and property damage, $1,000,000 per occurrence for personal and advertising injury, $2,000,000 per occurrence for products and completed operations, $2,000,000 aggregate for products and completed operations and $2,000,000 general aggregate

(ii) COMMERCIAL AUTOMOBILE LIABILITY: Insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 B Any Auto), with combined single limits of liability of not less than $1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY with minimum limits of liability of not less than $1,000,000 each accident, $1,000,000 disease policy limit and $1,000,000 disease each employee.

15.2 Provider shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Provider shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Provider shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

15.3 All policies of insurance required hereunder shall be endorsed to provide that the

coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Provider shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Provider shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

15.4 The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so the Provider's insurance shall be primary and no contribution shall be required of City. The Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.

15.5 Provider shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement.** Upon request of City, Provider shall immediately furnish City with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

15.6 The fact that insurance is obtained by Provider shall not be deemed to release or diminish the liability of Provider including without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City, its officers, officials, agents, employees and volunteers, shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Provider. Approval or purchase of any insurance contracts or policies shall in no way relief from liability nor limit the liability of Provider, its principals, officers, agents, employees, persons under the supervision of Provider, vendors, suppliers, invitees, subcontractors, consultants or anyone employed directly or indirectly by any of them.

15.7 If at any time during the life of the Agreement or any extension, the Provider fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to the Provider shall be withheld until notice is received by the City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Provider of its responsibilities under this Agreement.

15.8 If the Provider should subcontract all or any portion of the work to be performed under this Agreement, the Provider shall require each subcontract to provide insurance protection in favor of the City, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs except that the subcontractors' certificates and endorsements shall be on file with the Provider and City prior to the commencement of any work by the subcontractor.

16. Subcontracts.

16.1 The Provider shall not enter into subcontracts for any work contemplated under the Agreement without first obtaining the City's written approval.

17. Indemnity.

17.1 The Provider shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but no limited to personal injury, death at any time and property damage) incurred by the City, the Provider or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the performance of this Agreement. The Provider's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

17.1.1 If the Provider should subcontract all or any portion of the work to be performed under this Agreement, the Provider shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

17.1.2 This section 17 shall survive termination or expiration of this Agreement.

18. Conflict of Interest.

18.1 Prior to City's execution of this Agreement, Provider shall complete a City of Fresno Conflict of Interest Disclosure Statement. Said statement is attached hereto as Exhibit "B" and incorporated herein by reference. During the term of this Agreement, Provider shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Provider on Exhibit "B".

18.2 No member, officer, or employee of the Provider or its designees or agents who exercise any function or responsibility with respect to the program during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for Services to be performed in connection with this Agreement. The Provider shall incorporate, or cause to be incorporated, in all contracts and subcontracts a provision prohibiting such interest pursuant to the purposes of this section 18.

18.3 Provider shall not employ or retain the services of any person while such person either is employed by City or is a member of any City commission, board, committee, or similar City body. This requirement may be waived by the City's Chief Administrative Officer if no actual or potential conflict is involved.

18.4 Provider shall comply with all applicable laws, rules, regulations and requirements governing avoidance of impermissible conflicts, including without limitation the requirements of California (Government Code Section 1090 et, seq.) the California Political Reform Act (Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.).

18.5 Provider represents and warrants that as of the effective date hereof, it represents no client or customer whose interests are adverse to the City's.

18.6 This section 18 shall survive expiration or termination of this Agreement.

19. Amendment.

19.1 This Agreement may not be amended or otherwise modified in any way whatsoever, except in writing signed by the parties and added as an addendum hereto.

20. Assignment.

20.1 This Agreement is personal to the Provider, non-transferable and shall be valid only for the herein above named Provider. The Provider may not and shall not, at any time, sell, transfer, or assign this Agreement, in whole or part, and Provider may not and shall not assign the payment of any monies due to be paid to it by City under the terms of this Agreement to any other individual(s), corporation(s), or entity(ies) whomsoever (it being mutually clearly understood and expressly agreed that City shall have the right to pay and shall pay any and all monies due Provider hereunder directly to Provider), absent the written consent of the City.

21. Severability.

21.1 The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Independent Contractor.

22.1 In the furnishing of the services required by this Agreement, Provider and City agree that Provider is an independent contractor and no employer/employee relationship shall in any way whatsoever be deemed to exist between the parties hereto, and that any provisions in this Agreement which may appear to give City the right to direct Provider as to the details of the doing of any work to be performed by Provider hereunder, or to exercise a measure of control over said work, shall be deemed to mean, and shall mean, that Provider shall follow the desires of City in the results of the work only and not in the means whereby said work is to be accomplished, and that Provider shall use its own discretion and shall have complete and authoritative control over the work and as to the details of the doing of the work. It is expressly agreed that City's exercise of inspection and control of the work being performed, as is necessary to accomplish the foregoing, shall in no case be construed as controlling the performance of the work of Provider in such a manner as to sever the independent contractor relationship.

23. Attorney's Fees.

23.1 If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Binding Effect.

24.1 Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferee, agents, servants, employees and representatives.

25. Provider's Certification.

25.1 The Provider certifies to the best of its knowledge and belief that no federally appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, or a member of Congress, or 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, or the extension, continuation, renewal, amendment or modification or any Federal contract, grant, loan, or cooperative agreement.

25.2 If any funds other than federally appropriated funds have been paid or will be paid to a person for influencing 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, the Provider shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Without limitation, the disclosure requirements and prohibitions of 42 U.S.C. 3537a and 3545 and 31 U.S.C. 1352 (the Byrd Amendment), and the implementing regulations at parts 4 and 87 of the Title 24 CFR shall apply to Provider's pursuit of this Agreement.

25.3 The Provider shall require that the language of the above certification be included in the documents for all sub recipient tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

25.4 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 Agreement.

26. Notices.

26.1 Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, by registered or certified mail, return receipt requested with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

26.2 Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 A.M., on the fourth (4th) calendar day following the date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.

27. Non-Solicitation.

27.1 Provider represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this Agreement or any rights/benefits hereunder.

28. Waiver.

28.1 The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

28.2 No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

29. Governing Law and Venue.

29.1 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

30. Interpretation.

30.1 The parties acknowledge that this agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of, or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

31. Time of Essence. Time is of the essence for the performance of this Agreement.

32. City's Authorized Agent. For purposes of this Agreement the Manager of the Housing & Community Development Division, hereinafter referred to as the "Manager", shall be fully empowered to act for and on behalf of the City, as the City's authorized agent, except that only the Fresno City Council, and not the Manager, shall have the power either (i) to extend the original term of this Agreement or (ii) to increase the original ESG Funding of this Agreement.

33. Headings.

33.1 The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

34. Cumulative Remedies.

34.1 No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

35. Entire Agreement.

35.1 This Agreement including the documents, instruments and exhibits referenced and incorporated herein contain(s) all agreements of the parties with respect to the subject matter hereof. No prior agreement or understanding pertaining to any such matter shall be effective. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

36. Counterparts.

36.1 This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. The execution of this Agreement by any party hereto will not become effective until counterparts hereof have been executed by each of the parties hereto.

37. Disclaimer of Relationship.

37.1 Nothing contained in this Agreement, nor any act of City or of Provider, or of any other person, shall in and by itself be deemed or construed by any person to create any relationship of third party beneficiary, or of principal and agent, of limited or general partnership, or of joint venture. Provider shall have no authority to bind the City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Provider shall bear its own costs/expenses in pursuit hereof.
////

Attachments: Exhibit "A" - Homeless Services Report
Exhibit "B" - Disclosure of Conflict of interest

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

CITY OF FRESNO
a Municipal Corporation

By: Mark Scott
Mark Scott
City Manager

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Sherri L. Badertscher
Deputy 1/4/12

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: Shannon Chaffin
Deputy

Turning Point of Central California a
California Nonprofit Corporation

By: J. Jeff Fly
J. Jeff Fly
Chief Executive Officer

(Attach certificate of acknowledgment)

ADDRESSES:

CITY:

City of Fresno
Housing & Community Development Division
Attn: John M. Robertson,
Management Analyst III
2600 Fresno Street, Room 3076N
Fresno, CA 93721

PROVIDER:

Turning Point of Central California

Attn: J. Jeff Fly
P.O. Box 7447
Visalia, CA 93290-7447

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Tulare

On 12-16-11 (Date) before me, Carolyn F. Benner - Notary Public (Here Insert Name and Title of the Officer)

personally appeared J. Jeff Fly (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

CAROLYN F. BENNER
Commission # 1862622
Notary Public - California
Tulare County
My Comm. Expires Sep 20, 2013

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carolyn F. Benner (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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City of FRESNO

EXHIBIT A
EMERGENCY SHELTER GRANT
HOMELESS SERVICES QUARTERLY REPORT

Name of Organization: Turning Point	**Period Covered by Report:**
Address: 1642 "L" Street	**Description of Services:** Meals _____ Shelter _____
City: Fresno **State:** CA **Zip Code:** 93721	**Term of Contract/Agreement:** July 1, 2011 - June 30, 2012
Phone Number: 559 233-2663	

Programs and Service(s):

_____ Emergency Shelter Facilities
_____ Vouchers for Shelters
_____ Drop-in Center/Food Pantry
_____ Mental Health
_____ Alcohol/Drug Program
_____ Child Care
_____ Other

_____ Transitional Housing
_____ Outreach
_____ Soup Kitchen/Meal Distribution
_____ Health Care
_____ HIV/AIDS Services
_____ Employment
_____ Homeless Prevention

Residential Services:

Average number served daily: _____ Adults _____ Children

Enter Approximate Percentages (round to the nearest whole number e.g. 48.2%=48% or 23.7%=24)

Unaccompanied 18 and over _____ % Males _____ %Females

Unaccompanied under 18 _____ % Males _____ % Females

Families with Children Headed by:

Single 18 and over	_____ % Male	_____ % Female
Youth 18 and under	_____ % Male	_____ % Female
Two parents 18 and over	_____ % Male	_____ % Female
Two parents under 18	_____ % Male	_____ % Female
Families with no children	_____ % Male	_____ % Female

On an average day the percentage of the population served who are:

_____ % Battered Spouse
_____ % Runaway/Throw Away Youth
_____ % Chronically Mentally ILL
_____ % Developmentally Disabled
_____ % HIV/AIDS
_____ % Alcohol Dependent Individuals

_____ % Drug Dependent Individuals
_____ % Elderly
_____ % Veterans
_____ % Physically Disabled
_____ % Other

Shelter Type: Number of persons housed

_____ Barracks
_____ Group/Large House
_____ Scattered Site Apartment
_____ Single Family Detached House

_____ Single Room Occupancy
_____ Mobile Home/Trailer
_____ Hotel/Motel
_____ Other

Organization: Turning Point **Reporting Period:** _____

Age Levels	
0-5	
6-12	
13-17	
18-34	
35-54	
55-59	
60-64	
65+	
Unknown	
Total	

Gender	
Male	
Female	
Total	

Veterans	
Persons w/ Disabilities	

Quarter:	
Total Meals	
Total Shelter Nights	
Year to Date:	
Total Meals	
Total Shelter Nights	

Race		
	Total Persons	**Hispanic Persons**
White		
Black/African American		
Asian		
Amer. Indian/Alaska Native		
Native Hawaiian/Other Pacific Islander		
Amer. Indian/Alaska Nat. & White		
Asian & White		
Black/African Amer. & White		
Amer. Indian/Alaska Nat. & Black African American		
TOTAL		

Matching Funds Report (ESG requires a 1:1 match). The following are the sources of the agency's match:

Source(s):	**Amount**
1	$
2	
3	
4	
5	
6	
7	
8	
Total	$

Signature of the Authorized Agent or Officer: _____

Date: _____

Print/Type Name: _____

Job Title: _____

EXHIBIT "B"

DISCLOSURE OF CONFLICT OF INTEREST

	Turning Point of Central California	YES*	NO
1.	Are you currently in litigation with the City of Fresno or any of its agents?		✓
2.	Do you represent any firm, organization or person who is in litigation with the City of Fresno?		✓
3.	Do you currently represent or perform work for any clients who do business with the City of Fresno?		✓
4.	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City, or in a business which is in litigation with the City?		✓
5.	Are you or any of your principals, managers or professionals, related by blood or marriage to any City employee who has any significant role in the subject matter of this service?		✓
6.	Are you employed by any other jurisdictions or agencies?		✓

* If the answer to any question is yes, please explain in full.

J. Jeff Fly
Chief Executive Officer

12-16-11
Date