

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**DIVISION OF FINANCIAL ASSISTANCE****Emergency Housing and Assistance Program - Capital Development (EHAPCD)**

P. O. Box 952054, Suite 390-4

Sacramento, CA 94252-2054

(916) 322-1560

FAX (916) 323-6016



«Auth_Rep_Title» «Auth_Rep_First_Name» «Auth_Rep_Last_Name»
«Auth_Rep_Title_1»
«Applicant_Name»
«Auth_Rep_Address»
«Auth_Rep_City», CA «Auth_Rep_Zip»

RE: Contract Agreement No. «Loan_No»

Dear «Auth_Rep_Title» «Auth_Rep_Last_Name»:

Congratulations on receiving your EHAPCD Program award. Attached to this email are the documents you need in order to obtain funds for your program and comply with the provisions of the deferred loan agreement. These documents include:

1. **The Standard Agreement, Std. 213 and Exhibits A through E**

Exhibit A, Authority, Purpose and Scope of Work

Exhibit B, Budget Detail and Payment Provisions

Exhibit C, State of California General Terms and Conditions – GTC 610(*)

Exhibit D, EHAPCD General Terms and Conditions

Exhibit E, Special Terms and Conditions

To ensure efficient processing of the Standard Agreement, print **five (5) copies** of the Std. 213, **cover page**. The person authorized by the Resolution submitted with the deferred loan application must provide an **original signature, printed name, title and date** on the lower left-hand section entitled, "Contractor", on each copy of the Std. 213 cover page. The five (5) original, signed cover pages must be returned **immediately** to the following address: (It is recommended proof of mailing is maintained).

**Department of Housing and Community Development
Business and Contract Services Branch
Contracts Office
1800 3rd Street, MS #350
Sacramento, CA 95811**

(*)Exhibit C, State of California General Terms and Conditions GTC 610 is incorporated by reference and made part of the Standard Agreement, as if attached hereto. This document is located at: <http://www.ols.dgs.ca.gov/Standard%20Lnaguage/default.htm> and may be downloaded, printed and maintained on file.

Maintain this electronic version of the complete Standard Agreement (Std. 213 and Exhibits A through E) for your pending file. Be advised this Agreement is not effective until it is signed by the Department. Once the Department approves and executes the Agreement, the signed Std. 213 will be emailed to you in PDF format for your file. An original signed Std. 213 will also be provided to you via U.S. mail.

2. Other Forms

Refer to the HCD Website at <http://www.hcd.ca.gov/fa/ehap/ehap-capdev.html> for program forms and additional information.

Program forms should be mailed to:

«Representative», Program Representative
Department of Housing and Community Development
Division of Financial Assistance/EHAPCD Program
1800 3rd Street, MS #390-4
Sacramento, CA 95811

If you have any questions or concerns, please contact EHAPCD **as soon as possible** at «Rep_Phone_No». We look forward to working with you.

Sincerely,

«Representative», Program Representative
Emergency Housing and Assistance Program – Capital Development

AGREEMENT NUMBER XX-EHAPCD-XXXX
REGISTRATION NUMBER N/A

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME

2. The term of this Agreement is: **Upon HCD Approval through 24 months from date of execution.**

3. The maximum amount of this Agreement is: \$

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A -	Authority, Purpose and Scope of Work	2	page(s)
Exhibit B-	Budget Detail and Payment Provisions	8	page(s)
Exhibit C -	State of California General Terms and Condition*	GTC	610*
Exhibit D -	EHAPCD Terms and Conditions	7	page(s)
Exhibit E -	Special Terms and Conditions	1	page(s)

TOTAL NUMBER OF PAGES ATTACHED:

18 page(s)

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.documents.dgs.ca.gov/ols/GTC-610.doc>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

Department of Housing and Community Development

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

**Stacy Q. Hernandez, Contracts Manager
 Business and Contract Services Branch**

ADDRESS

1800 Third Street, Room 350, Sacramento, CA 95811

**California Department of General
 Services Use Only**

Exempt per: SCM 1, 4.04.3
 (DGS Memo Dated 6/12/81)

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK**1. Authority**

The Department of Housing and Community Development ("Department") operates the State Emergency Housing Assistance Program Capital Development ("EHAPCD") Program, pursuant to Health and Safety Code Section 50800 et seq., Section 53533 and 53545 as applicable, and the regulations set forth in the California Code of Regulations ("CCR") Title 25, Division 1, Chapter 7, Subchapter 12, commencing with Section 7950, all as amended and in effect from time to time.

2. Purpose

In response to a Notice of Funding Availability ("NOFA"), «Applicant_Name», ("Contractor") submitted an application ("Application") to the Department for financial assistance in the form of an EHAPCD Loan ("Loan"). The Department has agreed to make the Loan as a financial incentive based on the creation of new, or the preservation of Emergency and Transitional Housing beds. By entering into this Standard Agreement ("Agreement") the Contractor agrees to comply with the terms and conditions of this Agreement, the NOFA, the representations contained in the Application, and the requirements of the authority cited above. Based on the representations made in the Application, which is hereby incorporated by reference, and in accordance with the NOFA and the authority cited above, the Department agrees to provide a Loan in the amount of \$«Loan_Amount» for the purpose of funding the Scope of Work ("Work") described below.

3. Scope of Work

Contractor shall perform the Work as described in the Application. All written materials or alterations submitted as addenda to the original Application and which are approved in writing by the EHAPCD Program Manager or higher Departmental official, as appropriate, are hereby incorporated as part of the Application. The State reserves the right to require the Contractor to modify any or all parts of the Application in order to comply with EHAPCD Program requirements.

- A. Any addenda, changes or alterations in the original Work must be approved by the Department, and shall require an amendment to this Agreement. The Department reserves the right to review and approve any Work to be performed by the Contractor in relation to this Agreement.
- B. The project shall be known as «Project_Shelter» located on that certain real property commonly known as «Shelter_Address», «Shelter_City», California, in the County of «Shelter_County».
- C. This «Type_of_Shelter» shall contain:
 - «Number_of_New_ES» New Emergency Shelter beds
 - «Number_of_Preserved_ES» Preserved Emergency Shelter beds
 - «Number_of_New_TH» New Transitional Housing beds
 - «Number_of_Preserved_TH» Preserved Transitional Housing beds

EXHIBIT A

For a total of «Total_Beds» beds.

4. State Coordinator/Contract Coordinator

The Department Coordinator for this Agreement is the EHAPCD Program Manager, Division of Financial Assistance, or the Homeless and Housing Assistance Section Chief's designee. Any notice, report, or other communication required by this Agreement is to be mailed by first-class mail to the Department at the following address:

EHAPCD Program Manager
Department of Housing and Community Development
Division of Financial Assistance
P.O. Box 952054
Sacramento, California 94252-2054
Phone: (916) 445-0845

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Budget Detail for Funding Activity

For the purpose of performing the Work described herein, the Contractor shall receive a Loan in the amount of \$«Loan_Amount» which consists of:

<u>Activity:</u>	<u>EHAPCD Funds</u>
Acquisition	\$«Acquisition»
New Construction	\$«New_Construction»
Rehabilitation	\$«Rehabilitation»
Administration	\$«Administration»
Total	\$«Loan_Amount»

2. Loan Term

- A. The Loan term is based on the approved activities and will be for «Loan_Term» years from the date that either the Certificate of Occupancy is issued, or in the case where a local jurisdiction does not issue a Certificate of Occupancy, the date the Notice of Completion is recorded. For acquisition only, the loan term will be for ten (10) years from the date the Regulatory Agreement is recorded. The Contractor shall provide services for the full Loan term, based on approved activities.
- B. In no instance shall the Department be liable for any costs in excess of the amount identified in this Exhibit, nor for any unauthorized or ineligible costs, as stated in the NOFA.
- C. Contractor shall execute a Promissory Note, with the Department as the Beneficiary, in the amount of the Loan. The Promissory Note shall be secured by a Deed of Trust against the project property in a lien position acceptable to the Department. The Promissory Note shall bear interest at the rate of three percent (3%) simple interest per annum.
- D. Repayment of the Loan shall be deferred as long as the project is used as an emergency shelter, a transitional housing facility, or a safe haven, as represented in the Application. Upon completion of the initial Loan term, the Loan shall be forgiven. However, if a transfer or conveyance of the project occurs prior to the end of Loan term that results in the project no longer being used as an emergency shelter, transitional housing, or safe haven, the Department shall require the immediate repayment of the Loan including all outstanding principal and any accrued interest.

3. Commencement and Term

EXHIBIT B

- A. This Agreement is effective upon approval by the Department, which is the date stamped in the lower right portion of the Standard Agreement (STD 213). Contractor agrees that Work shall not commence prior to the effective date of this Agreement.
- B. Pursuant to CCR, Title 25, Section 7970, Contractor shall commence the approved activities no later than twelve (12) months from the effective date of this Agreement and provide the Department with acceptable documentary evidence thereof. The Department, at its sole discretion, may approve one, twelve (12) month extension to this Agreement to extend the commencement date.
- C. Pursuant to CCR, Title 25, Section 7970 (c)(2), the deadline to complete all approved activities is twenty four (24) months from the date this Agreement is executed. If requested by the Contractor, the Department may approve an extension to this Agreement extending the termination date for a twelve (12) month period.

4. General Disbursement and Payment Provisions

- A. Contractor shall demonstrate site control of the project property, by providing one of the following to the Department:
 - 1) Fee Title, as evidenced by a Grant Deed, listing only the legal name of the Contractor;
 - 2) A legally enforceable Purchase Agreement or Lease Option to Purchase, or other legally enforceable agreement for the acquisition of project site; or,
 - 3) Legally enforceable Lease or Option to Lease for the project site with provisions that enable the lessee to lease the land and make improvements on and encumber the property.
 - 4) Contractor shall submit a preliminary Title Report dated within thirty (30) days of the anticipated EHAPCD Loan closing date.
 - 5) Contractor shall hold title or leasehold to the project site sufficient to meet the Contractor's obligations under this Agreement and the secured Loan documents. The status and nature of the Contractor's Title and interest in the property, as well as all matters affecting title shall be subject to Department approval.
- B. Contractor shall submit a written appraisal, as described in Exhibit D, Paragraph 5, dated less than twelve (12) months from the Loan closing date.
 - 1) The appraisal specifying the project's market value "as-is" and "as-completed" must be performed by a qualified appraiser, licensed by the State of California, with project appropriate experience. All appraisals and/or comparables are subject to Department approval.
 - 2) For rehabilitation of less than twenty-five thousand dollars (\$25,000), Contractor may have two (2) independent Real Estate Brokers submit at least three (3) comparables each in lieu of an appraisal.

EXHIBIT B

- 3) If the project will be held in leasehold title and the lease payments will be made at market rate, a minimum of three (3) lease comparables are required from an independent licensed Real Estate Broker to verify that the lease payments are reasonable.
- C. If a leasehold interest in the property is to remain after EHAPCD escrow closes, a copy of the recorded lease, with a Lease Rider if applicable, in a form acceptable to the Department shall be provided. At a minimum, the lease term must be equal to the EHAPCD Loan term plus ten (10) years.
- D. Contractor purchasing and/or rehabilitating an existing structure is required to provide a Property Inspection Report performed by a qualified licensed contractor; a general home inspector is not acceptable. The Property Inspection Report shall include current condition of the improvements and a detailed summary of the repairs needed to establish and/or maintain satisfactory condition of the property.
- 1) For the acquisition, demolition and/or rehabilitation of existing structures built prior to 1978, an Asbestos and Lead Based Paint Survey from a licensed professional working in the applicable field is required.
 - 2) Contractor shall provide the Department with a copy of the survey findings with evidence that the project budget has sufficient funding available to pay for remediation costs.
- E. Contractor shall provide an updated Detailed Sources and Uses spreadsheet modified to include line item costs represented in the project budget by the identified funding source. The total must reconcile with the EHAPCD construction costs submitted in the Detailed Sources and Uses Spreadsheet.
- 1) Pursuant to EHAPCD Regulations, (CCR, Title 25) Section 7962(a) & (c), if furniture, stand alone appliances, equipment for recreational purposes, parking lots, fencing, landscaping and/or off-site improvement costs are included in the Detailed Cost Estimate; EHAPCD funds shall not be used to pay for these costs.
 - 2) Contractor shall submit an updated Detailed Cost Estimate signed by the estimator that designates which line item costs will be funded by EHAPCD and specifies that total. This total must reconcile with the total EHAPCD line items costs submitted in the Detailed Sources and Uses Spreadsheet.
 - 3) With regard to projects that have multiple funding sources, Contractor is to provide funds release timetable by funding source.
 - 4) Contractor shall provide commitment letter(s) and/or other documentation acceptable to the Department, of all other funding sources being used to complete the project.
 - 5) Contractor shall provide final unsigned Loan/Grant documents for all other project funding sources (e.g. Deed of Trust, Promissory Note, and Regulatory Agreement) as requested by the Department.

EXHIBIT B

- 6) Contractor shall confirm the anticipated final lien position for the EHAPCD Loan within sixty (60) days of this Agreement approval date. Based on current and anticipated liens, the Department may require other existing lien holders to execute the EHAPCD Subordination Agreement.
- F. Contractor shall comply with all requirements of the Relocation laws, as described in Exhibit D, Paragraph 6.
- G. The following documents are required and must be executed and/or recorded as applicable, prior to the disbursement of any EHAPCD Loan funds. Templates for these documents are located on the EHAPCD website at: www.hcd.ca.gov/fa/ehap/ehap-capdev.html
- 1) Promissory Note in the amount of the Loan, which shall identify the Department as Beneficiary;
 - 2) Regulatory Agreement;
 - 3) Deed of Trust;
 - 4) Certificate of Corporation;
 - 5) Development Agreement, if applicable;
 - 6) Lease Rider, (for leasehold property, where applicable);
 - 7) Subordination Agreement(s) when other lien holders are on title; and,
 - 8) Notices of Default.
- H. Upon recordation of the Regulatory Agreement through the EHAPCD Loan closing, there will be no encumbrance of any kind (such as liens, judgment, property taxes, assessments) other than current real property taxes and assessments not yet due and payable, and liens in favor of the organization, approved in writing by the Department.
- I. All Loan funds shall be disbursed to the Contractor in accordance with this Agreement. A formal request to change the designated payee (other than Escrow Company) must be notarized and signed by all parties involved and submitted to the Department in writing, accompanied by a new Payee Data Record (STD. 204), prior to the submission of a Request for Disbursement.
- 1) Acquisition funds will be disbursed upon receipt and acceptance of the estimated closing statement by the Department. Upon close of escrow, a copy of the Final Settlement Statement is to be provided to the Department. In the event funds are deposited into an escrow account, the account shall be interest bearing and insured by the Federal Deposit Insurance Corporation (FDIC). All interest earned by the escrow account belongs to the Department and shall be returned to the Department when the escrow account is closed.

EXHIBIT B

- 2) Administration funds will be disbursed upon receipt and acceptance by the Department of evidence for staff costs and overhead directly related to the EHAPCD Project.
 - 3) Contractor shall provide the Department a lender's policy of Title Insurance, insuring the lien of the Loan against the property in position and subject only to exceptions acceptable by the Department.
- J. Contractor shall submit a Semi-Annual Report (SAR) within thirty (30) days after the end of the Department designated report period, on the form provided by the Department. The semi-annual report period begins the first day of every six-month period after their execution date of this Agreement. No funds will be disbursed by the Department unless the Contractor has submitted the required reports. For further reporting instructions see Exhibit D, Paragraph 13.

5. New Construction and Rehabilitation Disbursement Provisions

Construction related costs will be disbursed upon agreement of the value of Work by the Contractor (Borrower), Building Contractor, and/or Architect.

- A. Contractor shall provide a Phase I Environmental Survey (New Construction only) and evidence of compliance, with all survey recommendation or budgetary documentation, to verify environmental compliance will be achieved and funded.
- B. All subcontracts entered into by the Contractor shall comply with all requirements of this Agreement. Subcontracts shall include within their terms, or by reference and attachment, the applicable provisions of this Agreement. The subcontract shall contain a provision that the records of the contracting parties shall be subject to audit by the State for a period of five (5) years after termination of this Agreement.
- C. Contractor shall provide to the Department evidence of written bidding procedures, definition of what constitutes a "responsible bidder", and plans for solicitation for bids for the services and/or materials, prior to solicitation. Contractor shall enter into a written contract with the successful lowest responsible bidder or shall reject all bids. EHAPCD Bid Guidelines are recommended for use and are located at:
www.hcd.ca.gov/fa/ehap/ehap-capdev.html.
- D. If the Bid Guidelines are altered in any manner, the entire Bid Guidelines with alterations must be submitted to the Department for review and approval before the solicitation.
- E. Once the bidding process is complete and the Contractor has made an initial determination of which bid is the lowest responsible bid, and prior to notification of award, Contractor shall submit the complete and total bid package to the Department for review and acceptance, which shall include the following:
 - 1) Copy of written bidding procedures, previously approved by Department;
 - 2) Copy of the publicly advertised bid (at a minimum appearing in a paper of general circulation);

EXHIBIT B

- 3) Complete copies of each bid received, (minimum of three (3) bid responses required; if a Contractor's solicitation results in less than three (3) responsible bids, Contractor is required to provide a written satisfactory explanation to the Department that a reasonable effort was made to attract responsible bidders);
 - 4) Draft Notice of Award (contract to be awarded to the lowest responsible bidder or shall have rejected all bids);
 - 5) Draft Department approved Construction Contract (AIA 101) which includes ten percent (10%) retention and Construction Contract Addendum (Department form);
 - 6) Letter size legible copies of the final approved plans (electronic copy acceptable); and,
 - 7) Copy of floor plans/schematic showing the bed locations, for total number of beds identified in Exhibit A, Paragraph 3, C., of this Agreement.
- F. Prior to incurring EHAPCD costs, Contractor shall provide the following documentation to the Department (items not generally part of the bidding process);
- 1) Agreement for architectural services;
 - 2) Consultant contract;
 - 3) Control services contract;
 - 4) Preliminary Work plan and budget; and,
 - 5) Evidence of adequate or necessary financing in excess of the Loan amount to insure project completion, satisfactory to the Department.
- G. Prior to commencing any EHAPCD rehabilitation and/or new construction Work, Contractor shall submit the following evidence satisfactory to the Department, as applicable:
- 1) All building department approved plans and permits;
 - 2) Local planning department approval for project site use;
 - 3) The construction/rehabilitation/conversion contracts;
 - 4) A detailed estimate of the project's construction cost and method of project monitoring; and,
 - 5) Approvals of all changes as required by the Department.
- H. Upon completion of rehabilitation/construction, the following documents must be submitted and approved by the Department prior to issuance of final draw:
- 1) Architect's Completion Certificate (Department form);

EXHIBIT B

- 2) Certificate of Completion Owner/Contractor (Department form);
 - 3) Copy of Final Building Inspection Sign off;
 - 4) Recorded Notice of Completion;
 - 5) Alta policy rewrite (from the title company) to evidence construction liens, if any have been removed from the Property;
 - 6) Certificate of Occupancy (completion per EHAPCD Regulations) when applicable; and,
 - 7) Close out Report (Department form).
- I. Other evidence as required by the Department that demonstrates the activities funded by the Loan are within the terms of this Agreement and in compliance with the local, Federal and State laws applicable to the EHAPCD Program.
- J. Contractor shall ensure the subcontract with the properly licensed building contractor includes a provision for the method of payments and for retaining an amount of not less than ten percent (10%) of the total rehabilitation and/or new construction Loan amount, for each progress payment until such time as the lien-free completion of the project is ensured.
- 1) For agreements of twenty-five thousand dollars (\$25,000) or greater, the Contractor shall require the general contractor to provide a performance bond and payment bond or equivalent security (such as a letter of credit), approved in advance by the Department. This security shall be in an amount equal to one hundred percent (100%) of the construction contract. Alternate forms of security may be utilized upon approval from the Department.
 - 2) Contractor shall submit a binder or Certificate of Insurance evidencing that the subject property is covered for Builder's Risk Insurance for a minimum of the amount of the total project cost.
 - 3) For completed structures, Contractor shall submit a binder or Certificate of Insurance evidencing that the subject property is covered for Hazard Insurance for the replacement cost of the property.
 - 4) No funds will be disbursed by the Department unless the Contractor has submitted the required reports as stated in Exhibit D, Paragraph 13 of this Agreement.

Be advised that escrow may be delayed if the requirements of Exhibit B, Paragraph 5, J are not adhered to and/or Contractor does not meet the "Insurance Requirements" outlined in the Escrow Instructions, Development Agreement and on the EHAPCD web page.

EXHIBIT B

6. Method of Payment

- A. To receive payment for the Work performed, Contractor shall submit a duly executed Request for Disbursement and any required supporting documentation to:

Department of Housing and Community Development
EHAPCD, 1800 Third Street, MS 390-4
P.O. Box 952054
Sacramento, CA 94252-2054
- B. Loan funds shall be disbursed only as authorized in writing by the Department.
- C. Contractor shall comply with all General Disbursement and Payment Provisions contained in Exhibit B, Paragraph 4 of this Agreement.
- D. Contractor shall submit its final Request for Disbursement no later than sixty (60) days after the completion of all approved activities (acquisition, new construction/rehabilitation). Any funds not requested or expended will revert to the Department, and Contractor shall forfeit any right to obtain disbursement.
- E. Any funds not expended by the Contractor by the expiration date of this Agreement, including any interest earned on EHAPCD funds, must be returned to the Department. Checks shall be made payable to the Department of Housing and Community Development, and shall be mailed within sixty (60) days of this Agreement's expiration date.

EXHIBIT D

EHAPCD TERMS AND CONDITIONS

1. Contractor's Application for Funds

- A. Contractor has submitted an Application to the Department for funding under the EHAPCD Program. The Department is entering into this Agreement on the basis of, and in substantial reliance upon, Contractor's facts, information, modifications or additions thereto, approved by the Department. The Application and any approved modifications and additions thereto are hereby incorporated into this Agreement.
- B. Contractor warrants that all information, facts, assertions and representations contained in the Application, approved modifications and additions thereto, are true, correct and complete to the best of Contractor's knowledge. In the event that any part of the Application and any approved modification and addition thereto is untrue, incorrect, incomplete or misleading in such a manner that would substantially affect the Department's approval, disbursement, or monitoring of the funding and the activities governed by this Agreement, the Department may declare a breach hereof and take such action or pursue such remedies as are provided for breach hereof.

2. Contractor Compensation

The consideration to be paid to the Contractor, as provided herein, shall be in compensation for all of the Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise provided.

3. Loan Amount

For the purpose of performing the Work to complete the project, the Department agrees to pay Contractor the amount specified in Exhibit B, Paragraph 1. In no instance shall the Department be liable for any costs for the Work in excess of this amount, nor for any unauthorized or ineligible costs.

4. Title and Conveyances

The Department shall have the right to approve or disapprove any proposed transfer or conveyance by Contractor, of any interest in the project property ("Property") secured by this Loan. Any said transfer or conveyance without prior Department approval shall constitute a breach of this Agreement, and the Department shall have the right to call the note due and payable.

- A. The status and nature of the Contractor's title and interest in the Property, as well as all matters affecting title, shall be subject to approval by the Department.
- B. Contractor represents it has and will maintain site control of the Property identified in Exhibit A, Paragraph 3, B. Site control must be either fee ownership of the Property, or a Lease, as identified in Exhibit B, Paragraph 4 of this Agreement.
- C. If the Loan includes funds for the purchase of a one (1) or two (2) unit project requiring repairs, renovation or rehabilitation of less than twenty thousand dollars (\$20,000) per unit, in order to occupy the units, the Contractor must provide evidence it has site control acceptable to the Department no later than six (6) months from the date of execution of

EXHIBIT D

this Agreement, or eight (8) months from the date of the award notification letter, whichever is sooner.

5. Appraisal

- A. Contractor shall submit to the Department, a written appraisal of the project dated less than twelve (12) months from the Loan closing date.
- B. The appraisal specifying the project's market value "as-is" and "as-completed" must be performed by a qualified appraiser, licensed by the State of California, in good standing, and with project appropriate experience. All appraisals and/or comparables are subject to Department approval.

6. Relocation

Contractor shall comply with all requirements of the Uniform Relocation Act (URA) of 1970: California Relocation Law (Government Code, Section 7260 et seq.) and the regulations promulgated there under at CCR, Title 25, and Section 6000 et seq.

- A. Contractor shall submit an acceptable Relocation Plan to the Department for approval, and subsequent required documentation including copies of General Information Notices (GIN) Eligibility Notices, comparable rentals, assistance calculations and other relocation documentation, if required by the Department.
- B. Contractor shall submit evidence that sufficient funds exist in the project budget to pay for relocation costs. EHAPCD funds are not eligible for relocation costs.

7. Environmental Requirements

This Agreement is subject to the provisions of the California Environmental Quality Act (CEQA). Contractor assumes responsibility to fully comply with CEQA requirements including hazardous material requirements regarding the Work. Contractor shall not use EHAPCD funds for the acquisition, lease, rehabilitation, or the conversion of any site or property in which there is reason to believe there has been a significant release of hazardous materials within two thousand (2,000) feet of the property. A mitigation plan, if called for by the study, which is acceptable to the Department, shall be provided.

8. Inspections

- A. The Department reserves the right to inspect any Work performed, program records or financial records to see that the Work is being and has been performed in accordance with the applicable State and/or local requirements, and this Agreement.
- B. Contractor shall inspect any Work performed hereunder to ensure the Work is being and has been performed in accordance with applicable State and/or local requirements, and this Agreement.
- C. Contractor agrees all Work found by such inspection not to conform to the applicable requirements be corrected within specified time periods and to withhold payment under the related subcontractor until it is so corrected.

EXHIBIT D

9. Properly Licensed Building Contractor

- A. Contractor shall not enter into any agreement, written or oral, with any building contractor without prior determination by the Department of the licensed building contractor's eligibility. A building contractor or subcontractor is not eligible to receive Loan funds if the contractor is not found licensed in good standing with the State of California or is listed on the Federal Consolidated List of Debarred, Suspended and Ineligible Contractors.
- B. The agreement between Contractor and any licensed building contractor shall require the building contractor and its subcontractors if any, to:
 - 1) Perform the Work in accordance with Federal, State and local housing and building codes, as applicable.
 - 2) Comply with the Labor Standards described in this Exhibit D, Paragraph 19 as applicable. In addition, all building contractors and subcontractor must comply with the provisions of the California Labor Code, as applicable.
 - 3) Maintain at least the minimum State required Worker's Compensation Insurance for their employees.

10. Insurance

- A. Unless otherwise approved in writing, Contractor shall have and maintain in full force and effect during the term of this Agreement, Liability Insurance with the Department named as an additional insured. Additionally, the Contractor shall provide Builder's Risk Insurance and Hazard Insurance as outlined in the "Insurance Requirement" located on the EHAPCD webpage at: www.hcd.ca.gov/fa/ehap/ehap-capdev.html. Prior to drawdown of funds, Contractor shall provide to the Department for review and approval, a valid Certificate of Insurance.
- B. If the activities funded by this Agreement include construction/rehabilitation or conversion Work, and the Department is providing construction period funding during the term of this Agreement, Contractor shall obtain, carry, and maintain in force, or cause to be obtained, carried, or maintained in force, Comprehensive General Liability Insurance in the amount of not less than one million dollars (\$1,000,000) for injury to, or death of more than one person in one accident; two million dollars (\$2,000,000) for injury to, or death of more than one person in one accident in buildings with elevators; and, adequate Property Damage Insurance.
- C. Contractor shall ensure the State of California and its officers and employees are named as additional named insured on the General Liability Insurance policy required by subdivisions A or B for purposes of any litigation arising at any time during or after the term of this Agreement with respect to the performance of this Agreement or any act or omission hereunder. Prior to drawdown of construction period funds, Contractor shall provide a valid Certificate of Insurance to the Department Coordinator for review and approval.

EXHIBIT D

11. Signage

During construction of the project the Contractor shall prominently display a sign on the construction site that contains the following message: (*Confidential project sites are exempt*):

«Project_Shelter»

THIS PROJECT MADE POSSIBLE BY FINACING PROVIDED BY THE
CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

12. Photographs

Contractor shall provide the Department with copies of any photographs that may be taken of the project by or on behalf of the Contractor or the projects architect. The Contractor shall authorize use of said photographs, at no expense to the Department.

13. Reports

- A. Contractor shall submit Semi-Annual Report (SAR) and any other required reports, within thirty (30) days after the end of the Department designated report period, on forms provided by the Department.
- B. Annual reports shall be submitted within thirty (30) days of the anniversary date of the expiration date of this Agreement until the conditions of the Loan's Regulatory Agreement are met and the lien is released by the Department. EHAPCD will accept annual reports submitted annually, if received by the Department by January 31st of each year.
- C. No funds will be disbursed by the Department unless the Contractor has submitted all required reports.

14. Fiscal Administration

- A. Contractor agrees to establish and maintain fiscal control and accounting procedures in accordance with generally accepted accounting principles and any guidelines prescribed by the Department. Contractor shall ensure EHAPCD funds are properly disbursed, are adequately controlled and are accounted for separately from all funds controlled by Contractor. The Department may, at its discretion, require the Contractor maintain EHAPCD funds in a separate checking account.
- B. Contractor agrees to maintain records that fully disclose the amount, date, purpose, payee, and disposition of the proceeds of the deferred Loan; the total cost of the project for which the deferred Loan is awarded; and the amount and disposition of that portion of the total costs provided by other sources. The procedure developed by the Contractor must provide for accurate and time recordation of the receipt of funds, expenditures, and unexpended balances.

15. Audit/Retention and Inspection of Records

- A. Contractor agrees the Department or its delegate will have the right to review, obtain, and copy all record pertaining to performance of this Agreement. Contractor agrees to provide the Department or its delegate with any relevant information requested and shall

EXHIBIT D

- permit the Department or its delegate access to its premises upon reasonable notice during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Government Code Section 8546.7. Contractor further agrees to maintain such records for a period of five (5) years after final payment under this Agreement.
- B. An expenditure which is not authorized by this Agreement or, which cannot be adequately documented, shall be disallowed and the Contractor shall reimburse the department, or its designee. Expenditures for Work not described in Exhibit A shall only be deemed authorized if the performance of such Work is approved in writing by the Department, prior to the commencement of such Work.
 - C. Absent, fraud or mistake on the part of the Department, the determination by the Department of the authorization of any expenditure shall be final.
 - D. If requested by the Department, Contractor shall cause an audit to be performed by a qualified State, local or independent auditor. Contractor shall notify the Department of the auditor's name and address immediately after the selection has been made. The contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.

16. **Sufficiency of Funds and Termination**

- A. The Department may terminate this Agreement at any time for cause by giving at least ten (10) day notice in writing to the Contractor. Cause shall consist of violations of any terms and/or special conditions of this Agreement, and the following:
 - 1) Unsatisfactory performance of Work;
 - 2) Violation of regulations.
- B. The Department retains the right to either terminate this Agreement under the ten (10) day cancellation clause or to amend this Agreement to reflect reduction of funds.
- C. The Department shall be liable only for approved obligations and expenditures to the date of termination. Contractor shall have sixty (60) days to submit a final Request for Disbursement after the date of termination of this Agreement.
- D. Upon termination of this Agreement, unless otherwise approved in writing by the Department, any unexpended funds received by the Contractor shall be returned to the Department within thirty (30) days of the Notice of Termination.
- E. This Agreement is deemed completed at the following times:
 - 1) Acquisition only – recordation of the Regulatory Agreement;
 - 2) Rehabilitation or New Construction – (with or without acquisition) Date Certificate of Occupancy is issued or date Notice of Completion is recorded.

EXHIBIT D

17. Litigation

- A. If any provision of this Agreement, or an underlying obligation is held invalid by a court of competent jurisdiction, such invalidity at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are and shall be deemed severable.
- B. Contractor shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and interests of the Department.

18. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce the provisions of this Agreement or to require performance of these provisions shall in no way be construed to be a waiver of such provision nor to affect the validity of this Agreement, or the right of the Department to enforce these provisions.

19. Labor Standards

All building contractors and subcontractors shall submit the following certification to the Contractor within ten (10) days after the execution of any contract or subcontract:

"I am aware of the provisions of Section 3700 of the California Labor Code which requires every Employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and I will comply with such provisions before commencing the performance of the Work of this contract".

"It is further agreed that, except as may be provided in Section 1815 of California Labor Code, the maximum hours a worker is to be employed is limited to eight (8) hours a day and forty (40) hours a week. The subcontractor shall forfeit, as a penalty, twenty-five dollars (\$25) for each worker employed in the execution of the subcontract for each calendar day during which a worker is required or permitted to labor more than eight (8) hours in any calendar day or more than forty (40) hours in any calendar week and is not paid overtime".

20. Prevailing Wage

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, Contractor shall ensure the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of the California Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- B. For the purpose of this requirement "construction work" includes but is not limited to rehabilitation, alteration, demolition, installation, or repair done under contract and paid for in whole or in part through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor between the Contractor and a licensed building contractor incorporating the following requirements (the "Construction Contract"):

EXHIBIT D

- 1) Where the Construction Contract will be between the Contractor and a licensed building contractor, Contractor shall serve as the "Awarding Body" as defined in the California Labor code.
 - 2) Where the Contractor will provide funds to a third party that will enter into the Construction Contract with a licensed building contractor, the third party shall serve as the "Awarding Body". The Construction Contract and any amendments thereto shall be subject to prior written approval of the Department.
- C. Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid when required by Section 1720 of the California Labor Code. These requirements may not apply to the new construction, expansion or rehabilitation work associated with facility development by a nonprofit organization to be operated on a not-for-profit basis for emergency shelter or transitional housing provided that:
- 1) The organization acquires at least fifty percent (50%) of the total project costs from non-public sources. For the purposes of this exclusion, total project costs do not include the value of real property that is transferred or leased. Total project costs include the value of donated labor, materials, architectural, and engineering services;
 - 2) These requirements may not apply if the project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless person with a total project cost of less than twenty-five thousand dollars (\$25,000) or;
 - 3) Public funding in the form of below market interest rate loans and restricting the occupancy of at least forty percent (40%) of the projects/units for at least twenty (20) years by deed or regulatory agreement to individuals or families earning no more than eighty percent (80%) of the area median income. Contractor is required to provide evidence supporting the exemption and a letter of opinion from their legal counselor;
 - 4) If the project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as an emergency shelter or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars (\$25,000).

EXHIBIT E

Special Terms and Conditions

1. **Special Condition:**

None