

RESOLUTION NO. 22-23-46

RESOLUTION 22-23-46 APPROVING THE 2023-2025 FISCAL YEAR OPERATION AND MAINTENANCE CONTRACT BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND STANISLAUS REGIONAL HOUSING AUTHORITY

CONTRACT #23-OMS-17834

WHEREAS, the California Department of Housing and Community Development has provided an Operation and Maintenance Contract, also known as a Standard Agreement, for the **2023-2025** Fiscal Year for the Buena Vista Migrant Center; and

WHEREAS, the Stanislaus Regional Housing Authority, acting through its Board of Commissioners, having the authority to enter into this contract, desires to approve this Operation and Maintenance Contract for the **2023-2025** operation of the Buena Vista Migrant Center.

NOW, THEREFORE, BE IT RESOLVED, the Board of Commissioners of the Stanislaus Regional Housing Authority, hereby approves the Operation and Maintenance Contract #23-OMS-17834 in an amount **not to exceed \$2,781,270.00** and authorizes its Executive Director to execute said contract, and any amendments to said contract, on behalf of the Stanislaus Regional Housing Authority.

PASSED AND ADOPTED this 20th day of July 2023, by the following votes:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

Attest: _____

Chairperson

Approved: _____

Secretary

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK

1. Authority and Purpose

Pursuant to Chapter 8.5 (commencing with Section 50710) of Part 2, Division 31, of the Health and Safety Code ("Statutes"), the Department of Housing and Community Development ("Department") is responsible for the administration of a program in order to provide housing and housing-related services for migratory workers and their families in California and may contract with housing authorities and other appropriate local, public and private non-profit agencies for the purpose of securing or obtaining such housing and other related services.

In accordance with the Statutes and the Office of Migrant Services (OMS) Program Regulations set forth in California Code of Regulations ("CCR") Title 25, Division 1, Chapter 7, Subchapter 7, commencing with Section 7600 ("Program Regulations"), the Department shall provide housing units and related facilities at the location set forth in Exhibit A-1 of this Agreement ("Housing Center" or "Migrant Center"). These housing units and related facilities shall at all times remain legally severable from the real property on which they are placed, and the title of these units shall be in the name of the Department. Upon termination of this Agreement, the Department shall have the right to remove these housing units and related facilities without reimbursement to the Contractor.

The Contractor agrees to comply with the terms and conditions of this Agreement, and all Exhibits hereto.

2. Scope of Work

- A. The Contractor shall permit occupancy of the Housing Center for migratory workers and their families in accordance with the applicable Statutes and Program Regulations and provide operations services ("Work") which are further described as all administrative, fiscal and management services; employment of staff; and purchasing, rental or use of supplies and materials as needed to operate, maintain, rehabilitate and protect the Housing Center pursuant to the terms and conditions of this Agreement. The Department reserves the right to review and approve all Work performed by the Contractor in relation to this Agreement. Any proposed revision to the Work must be submitted in writing for review and approval by the Department. Any approval shall not be presumed unless such approval is made by the Department in writing.
- B. The Work shall generally consist of operations, maintenance, and oversight of Department-approved rehabilitation and improvement of the Housing Center.
- C. The commonly accepted name and street address of the Housing Center is:

EXHIBIT A

Buena Vista Migrant Center
113 Tierra Alta
Watsonville, CA 95076

3. Term

All activities set forth in this Agreement and program funds allocated pursuant to Exhibit B-1 must be expended by June 30, 2024. All activities set forth in this Agreement and program funds allocated pursuant to Exhibit B-2 must be expended by June 30, 2025. Any costs incurred after June 30, 2025 are not eligible for reimbursement. This agreement expires on September 30, 2025.

4. Department Contract Coordinator

The coordinator of this Agreement for the Department is the Manager of the OMS Program, Division of Financial Assistance, or the Manager's designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement must be mailed by first class mail to the Department Coordinator at the following address:

OMS Program Manager
Department of Housing and Community Development
Division of Financial Assistance
Post Office Box 952054
Sacramento, CA 94252-2054

5. Contractor Contract Coordinator

The Contractor's Contract Coordinator for this Agreement is listed below. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class mail to the contact at the following address:

Stanislaus Regional Housing Authority
Jim Kruse
P.O. Box 581918
Modesto, CA 95358
JKruse@stanregionalha.org

EXHIBIT A-1

LEGAL DESCRIPTION

SITUATE in the Rancho San Andreas, County of Santa Cruz, State of California, and more particularly described as follows: BEING a portion of Lot 15 as shown upon that certain map entitled "Map No. 2 of the Harkins Ranch as partitioned by the Refarroas, W. R. Radcliff, John Kinnaugh and James L. Holohan and surveyed by C. B. Lewis in 1907, situated in Santa Cruz County, California" filed for record in the Office of the County Recorder on December 27, 1907 in Map Book 16, Page 8, Santa Cruz County Records, and BEGINNING at a point on the center line of Harkins Slough Road, a county road forty feet in width, from the most Northwestern corner of said Lot 15 at the intersection of the center line of Harkins Slough Road as aforesaid and the center line of Buena Vista Drive, a county road sixty feet in width, bears along the centerline of Harkins Slough Road the following courses: North 78° 45' West 1236.00 feet, North 49° 29' West 24.54 feet, North 13° 43' West 409.95 feet, North 40° 45' West 147.18 feet, North 23° 45' West 81.94 feet, North 8° 00' West 112.20 feet, and North 49° 15' West 194.70 feet; thence from said point of beginning, leaving the center line of Harkins Slough Road, South 26° 54' East 251.00 feet to a point; thence South 9° 34' East 253.00 feet to a point; thence South 72° 53' East 126.00 feet to a point; thence South 11° 08' East 228.00 feet to a point; thence South 34° 31' West 150.00 feet to a point; thence South 72° 28' West 225.50 feet to a point; thence South 11° 14' West 963.00 feet to a point; thence South 16° 37' West 151.00 feet to a point on the southerly boundary of said Lot 15; thence along the southerly boundary of said Lot 15 West 130.00 feet to a point; thence leaving the southerly boundary of said Lot 15 North 51° 45' West 416.00 feet to a point; thence North 21° 08' East 800.00 feet to a point; thence North 13° 16' West 174.50 feet to a point; thence North 16° 22' East 202.00 feet to a point; thence North 50° 55' East 220.00 feet to a point; thence South 85° 05' East 262.00 feet to a point; thence North 46° 12' East 67.00 feet, more or less, to a line parallel to and 40.00 feet southwesterly, measured at right angles, from the first two courses in this description; thence along said parallel line North 9° 34' West 56.00 feet, more or less, to the center line of Harkins Slough Road, as aforesaid; thence along said centerline of Harkins Slough Road South 78° 43' West 50.75 feet to the point of beginning.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Agreement Amount

- A. For the purposes of performing the Work, the Department agrees to provide the amount of \$800,744.00 for fiscal year 2023/24 and \$844,733.00 for fiscal year 2024/25, not to exceed \$1,645,477.00 (total for *two-years funding pursuant to this biannual contract*). At the sole discretion of the Department, this amount may be adjusted per annum in accordance with the grant allocation provided by the State of California to the Department, which may require an amendment to this Agreement.
- B. Unless amended, the Department is not liable for any costs for the Work in excess of the amount of this Agreement, nor for any unauthorized or ineligible costs.
- C. Funds provided under this Agreement are provided in the form of a grant only for the approved purposes and itemized amounts as stated in Exhibit B-1 Year One Operating Contract Budget and Exhibit B-2 Year Two Operating Contract Budget (“Budgets”) attached hereto and incorporated herein.
- D. Upon Year 2 of this Agreement’s term, Exhibit B-2 may be modified to adjust line item amounts in accordance with the Contractor’s Year 2 allocation, as granted by the State of California to the Department.
- E. Any adjustments to the Year 1 or Year 2 Budget require prior written approval of the Department, and may require written justification from the Contractor and an amendment to this Agreement.

2. Disbursement of Funds

- A. Upon receipt of a certified resolution, determined to be legally sufficient by the Department, and the execution of this Agreement, the Department agrees to disburse to the Contractor funds not to exceed the total amount stated in Paragraph 1.A of this Exhibit.
- B. The Department shall disburse requested funds for Work performed on behalf of or by the Contractor (and actions that are to be performed and documented by the Contractor pursuant to statute, regulation, contract, or schedule). Such Work will need to be evidenced and documented by the Contractor, including equivalent services performed by the Contractor (as opposed to hiring a third party) that have been approved beforehand by the Department, as required in this Agreement.
- C. The Department further agrees to disburse said funds only for the approved purposes and itemized amounts as described in the Budgets.

EXHIBIT B

- D. The Department shall reimburse the Contractor monthly in arrears for the Contractor's actual and necessary expenses in accordance with the Budget and upon receipt of a Request for Reimbursement. Requests for Reimbursement may be mailed to the Department or submitted via email to OMSProgram@hcd.ca.gov.
- E. The Contractor shall provide the Department with a monthly Request for Reimbursement no later than fifty (50) days after the end of each reporting month. The Request for Reimbursement must include adequate source documentation, evidencing that funds were spent consistent with the terms of this Agreement. Adequate source documentation can be a combination of any of the following: Signed timesheets, payroll reports, general ledgers that originate outside of the Contractor's sole control (i.e. through an Accounting Branch/Unit), the summary page of utility bills, bank statements, receipts, or any other relevant documentation as requested by the Department and subject to clarification.
- F. The Department cannot commence processing payment until it has received adequate source documentation, therefore the Department will withhold reimbursement until all required documentation is received and verified. The Department will withhold payment for disputed items, but all non-contested items will be processed for invoicing and repayment to the Contractor.
- G. Upon expiration of this Agreement, funds provided through this Agreement, which are in excess of actual and necessary expenses, may be disbursed and deposited into an OMS reserve account established and funded pursuant to Health and Safety Code Section 50710.1(b). Prior to said approval, the Department must certify that there is no need to address reasonable general maintenance requirements or repairs, rehabilitation, and replacement needs of the requesting Housing Center, which affect the immediate health and safety of residents. Pursuant to applicable law, the cumulative balance of the reserve account may not exceed 10 percent of the operating funds annually committed to the Contractor by the Department, unless specifically authorized by the Department. The Department has ultimate discretion as to whether said funds will be disencumbered or preserved within the OMS reserve account.
- H. Funds in the reserve account must be used only for capital improvements such as replacing or repairing structural elements, furniture, fixtures, or equipment of the Housing Center, the replacement or repair of which are reasonably required to preserve the Housing Center. Withdrawals from the reserve account may only be made upon receipt of written approval from the Department. Withdrawal requests must detail the amount and nature of expenditures and include the most recent bank statement from the reserve account. Withdrawals or expenditures made without prior Department approval are not authorized.
- I. The statutory reserve account referenced above in paragraph 2(G) and 2(H), the general operations account, the CARE account, the account which holds the tenant security deposits, and any other reserve accounts that the contractor may hold with Departmental approval must be maintained separately from one another.

EXHIBIT B

- J. If the Contractor is in violation of any provision of this Agreement, the Department may, at its sole discretion, withhold payment of funds under this Agreement until such violations are corrected.
- K. The expenditure period for FY 2023-2024 ends on June 30, 2024, the expenditure period for FY 2024-2025 ends on June 30, 2025. All Requests for Reimbursement shall be submitted to the Department by August 31, 2025. The Department will not process Requests for Reimbursement submitted to the Department after September 30, 2025.

3. Advances

- A. Upon the effective date of this Agreement, the Contractor may upon written request, obtain an advance of funds in an amount not to exceed twenty percent (20%) of the total Agreement amount, which reflects the annual operating costs of the Housing Center. The annual operating costs *does not include the amount of funds allocated for Minor Rehabilitation as specified in line item 304 of the Budget, as stated in paragraph 1. A and 4. A*. To request an advance of funds the Contractor cannot have an outstanding advance balance from the prior contract period, as further specified below.
- B. Advance balances will be deemed outstanding if Contractors have not, within 60 days of the end of the prior fiscal year (July 1st through June 30th) submitted acceptable invoices to cover the advances or deposited remaining funds to the reserves (with Department approval). Failure to submit acceptable invoices or deposit remaining funds to the reserves will result in the return of any remaining funds to the Department.
- C. Advanced funds must be recaptured during the final three months of invoices. If the Contractor has an outstanding advance balance at the end of the fiscal year, the Department is not required to provide an advance in the subsequent fiscal year.

4. Line Item Changes

The Contractor may upon prior written approval by the Department, transfer any approved allocations, or portions thereof, to other cost categories listed in the Budget for that fiscal year. In no event, shall the total amount of this Agreement be exceeded without prior execution of a formal amendment to this Agreement.

5. Special Funding Conditions

- A. Funds allocated for Minor Rehabilitation as specified in line item 304 of the Budget shall be subject to the following provisions:
 - 1) Funds may be spent only for the items and activities, in the maximum amounts specified, and according to the priority expressed in Item G of the Budget.
 - 2) Notwithstanding Paragraph 4 of this Exhibit, these funds shall not be subject to transfer to other cost categories.

EXHIBIT B

- 3) All reimbursements shall be in arrears and shall require submission of invoices and related supporting documentation in a manner directed by the Department.
 - 4) Any funds not expended upon the expiration of this Agreement shall be automatically disencumbered on that date and shall not be available for additional expenditures or reimbursements except as provided in Health and Safety Code Section 50710.1(b) and as further specified in paragraph 2(G)-(H).
- B. Funds allocated in Item B, line 209 “Major Equipment Repair/Maintenance” of the Budget shall be spent only for the items, and in the maximum amounts, specified in Item F of the Budget.
- C. Funds allocated in Item B, line 401 “Administrative Support Services” of the Budget shall be calculated as 10% of the total Budget per year, and shall be spent on administrative costs incurred by the Contractor to administer the OMS program.

6. Availability of Funds

The obligations under this Agreement are hereby made expressly contingent upon the availability of projected rental income and other funds for the purposes of performing the services identified in this Agreement. It is understood that this Agreement may have been written prior to the beginning of the fiscal year in order to expedite contract processing. However, should adequate funds not be appropriated by the Legislature for the current fiscal year or should other funds be reduced as a result of a court order or any other incident deemed legally binding by the Department, the Department may exercise its option to cancel this Agreement. Additionally, the Department, in its sole discretion, may opt to reduce the on-season period, unless the Department and the Contractor either amend this Agreement or mutually agree to budget reductions and a rescission of a portion of the encumbered funds as a means to mitigate the lack of funds.

EXHIBIT B-1
YEAR ONE OPERATING CONTRACT BUDGET
 THIS IS NOT AN INVOICE

Contract No.			
Term: July 1, 2023 - June 30, 2024			
		CONTRACTOR FUNDS	STATE FUNDS
A.	CENTER PERSONNEL		
101	Permanent Salaries/Wages	\$	\$ 146,401.00
102	Temporary Salaries/Wages		0.00
103	Personnel Benefits		76,098.00
	SUBTOTAL	\$ 0.00	\$ 222,499.00
B.	OPERATING EXPENSES		
201	Center Office Supplies	\$	\$ 900.00
202	Household Supplies		1,000.00
203	Communications		2,000.00
204	Travel		500.00
205	Auto Repairs/Maintenance		1,000.00
206	Gas/Oil		1,000.00
207	Minor Equipment Repair/Maintenance		2,000.00
208	Purchases Under \$150		300.00
209	Major Equipment Repair/Maintenance		23,350.00
211	Equipment Rental		500.00
212	Electricity and Gas		100,000.00
213	Garbage, Trash		121,000.00
214	Sewer, Water		164,000.00
215	Other Costs		5,000.00
217	Property and Liability Insurance		40,000.00
218	Other Insurance		1,300.00
219	Advertising		500.00
	SUBTOTAL	\$ 0.00	\$ 464,350.00
C.	MAINTENANCE EXPENSES		
301	Electrical/Plumbing/Paint/Solar Supplies	\$	\$ 12,000.00
302	Lumber and Materials		8,000.00
303	Grounds Maintenance		7,500.00
304	Minor Rehabilitation		12,000.00
	SUBTOTAL	\$ 0.00	\$ 39,500.00
D.	CONTRACTOR ADMINISTRATION		
401	Administrative Support Services	\$	\$ 72,795.00
402	Travel		500.00
403	Audit		1,100.00
	SUBTOTAL	\$ 0.00	\$ 74,395.00
E.	DEBT SERVICE & REPLACEMENT		
501	Reserves	\$	\$
502	Payment		
	SUBTOTAL	\$ 0.00	\$ 0.00
	TOTAL	\$ 0.00	\$ 800,744.00

OMS – Non-Rural Development
 2023– 2025 Operations Agreement
 Approved Date:
 Prep. Date: (date inserted by Contract Manager when each SA is created)

EXHIBIT B-1
 THIS IS NOT AN INVOICE

Contract No.		
Term: July 1, 2023 - June 30, 2024		
	CONTRACTOR FUNDS	STATE FUNDS
F. APPROVED EQUIPMENT REPAIR AND MAINTENANCE		
Refrigerators	\$	\$ 4,500.00
Ranges		3,250.00
Water Heaters		2,550.00
Mattress Sets		4,500.00
Mattress Sets		3,750.00
Mattress Covers		1,000.00
Mattress Covers		2,000.00
Adjustable Bed Frames		1,800.00
TOTAL LINE 209	\$ 0.00	\$ 23,350.00
G. APPROVED REHABILITATION ACTIVITIES		
Bi-annual Clean Up at WWTP	\$	\$ 12,000.00
TOTAL LINE 304	\$ 0.00	\$ 12,000.00

EXHIBIT B-2
YEAR TWO OPERATING CONTRACT BUDGET
 THIS IS NOT AN INVOICE

Contract No.			
Term: July 1, 2024 - June 30, 2025			
		CONTRACTOR FUNDS	STATE FUNDS
A. CENTER PERSONNEL			
101 Permanent Salaries/Wages	\$		\$ 153,706.00
102 Temporary Salaries/Wages			0.00
103 Personnel Benefits			79,903.00
SUBTOTAL	\$	0.00	\$ 233,609.00
B. OPERATING EXPENSES			
201 Center Office Supplies	\$		\$ \$ 900.00
202 Household Supplies			\$ 1,200.00
203 Communications			\$ 2,000.00
204 Travel			\$ 500.00
205 Auto Repairs/Maintenance			\$ 1,200.00
206 Gas/Oil			\$ 1,200.00
207 Minor Equipment Repair/Maintenance			\$ 2,100.00
208 Purchases Under \$150			\$ 350.00
209 Major Equipment Repair/Maintenance			\$ 23,350.00
211 Equipment Rental			\$ 500.00
212 Electricity and Gas			\$ 105,000.00
213 Garbage, Trash			\$ 127,000.00
214 Sewer, Water			\$ 174,000.00
215 Other Costs			\$ 5,500.00
217 Property and Liability Insurance			\$ 44,000.00
218 Other Insurance			\$ 1,430.00
219 Advertising			\$ 500.00
SUBTOTAL	\$	0.00	\$ 490,730.00
C. MAINTENANCE EXPENSES			
301 Electrical/Plumbing/Paint/Solar Supplies	\$		\$ \$ 13,200.00
302 Lumber and Materials			\$ 8,700.00
303 Grounds Maintenance			\$ 8,000.00
304 Minor Rehabilitation			\$ 12,000.00
SUBTOTAL	\$	0.00	\$ 41,900.00
D. CONTRACTOR ADMINISTRATION			
401 Administrative Support Services	\$		\$ \$ 76,794.00
402 Travel			\$ 500.00
403 Audit			\$ 1,200.00
SUBTOTAL	\$	0.00	\$ 78,494.00
E. DEBT SERVICE & REPLACEMENT			
501 Reserves	\$		\$ 0.00
502 Payment			0.00
SUBTOTAL	\$	0.00	\$ 0.00
TOTAL	\$	0.00	\$ 844,733.00

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 2023 – 2025 Operations Agreement

Approved Date:

Prep. Date: (date inserted by Contract Manager when each SA is created)

EXHIBIT B-2
 THIS IS NOT AN INVOICE

Contract No.		
Term: July 1, 2024 - June 30, 2025		
	CONTRACTOR FUNDS	STATE FUNDS
F. APPROVED EQUIPMENT REPAIR AND MAINTENANCE		
Refrigerators	\$	\$ 4,500.00
Ranges		3,250.00
Water Heaters		2,550.00
Mattress Sets		4,500.00
Mattresses		3,750.00
Mattress Covers		1,000.00
Mattress Covers		2,000.00
Adjustable Bed Frames		1,800.00
TOTAL LINE 209	\$ 0.00	\$ 23,350.00
G. APPROVED REHABILITATION ACTIVITIES		
Bi-annual Clean Up at WWTP	\$	\$ 12,000.00
TOTAL LINE 304	\$ 0.00	\$ 12,000.00

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EXHIBIT D

OMS PROGRAM GENERAL TERMS AND CONDITIONS

1. Seasonal Operations

- A. The Department shall designate a period of one hundred eighty (180) days each calendar year, unless otherwise extended or reduced by written agreement between the Department and the Contractor, during which the Migrant Center must be open to migratory agricultural workers and their households for occupancy, which period will be referred to as the "on-season." The remaining period of time during each calendar year will be referred to as the "off-season."
- B. During the on-season:
- 1) All common facilities of the Migrant Center subject to this Agreement, other than the housing units, must be available, as required by the Department, for the purpose of childcare services, health care services, educational programs, and other services approved by the Department and the Contractor for the benefit of resident migratory agricultural workers and their households.
 - 2) With reasonable discretion, residents of the Migrant Center, after prior notice to the Contractor, must be permitted to use the common facilities of the Migrant Center at any time such facilities are not required for use of programs scheduled by the Department or the Contractor, such as childcare programs, health programs, or educational programs.
- C. During the off-season, the Migrant Center must be available for such other use and subject to such other conditions as mutually agreed upon in writing by the Department and the Contractor, which must not be inconsistent or incompatible with the purposes of this Agreement.
- D. Migrant Center operations and alternative uses must not overlap, and Migrant Center operations must take precedence.

2. Financial Management

A. Rents and Other Receipts

Pursuant to applicable law, the Contractor shall collect when due, all rents, charges, and other amounts receivable on the Department's account in connection with the management and operation of the Migrant Center, in accordance with rates established by the Department. Such receipts collected under this provision must not be used for the operations or maintenance of the Migrant Center. Pursuant to Government Code §11259, all revenue must be remitted by the Contractor to the Department via check, along with a copy of the corresponding Monthly Rental Income Report, no later than fifty (50) days after the end of each month, to the following address:

EXHIBIT D

California Department of Housing and Community Development
Attention: Accounting Branch
2020 W. El Camino Avenue, Suite 300
Sacramento, CA 95833

B. Security Deposits

The Contractor shall collect, deposit, and disburse security deposits, if required, in compliance with any Department regulations or State laws governing tenant security deposits. Security deposits must be deposited into a separate account from the general operating account, reserve account, and CARE account. This account must be regularly maintained by the Contractor.

C. Account Maintenance

The Contractor shall maintain and safeguard all bank accounts associated with the Migrant Center in a way necessary to conduct their operations successfully and from which they may accurately report operational results for review, and otherwise comply with the terms of this agreement. The Contractor shall provide the Department with statements from all bank accounts associated with Migrant Center operations at least once annually at the beginning of each fiscal year, and upon request from the Department. Statements may be sent electronically to OMSProgram@hcd.ca.gov.

D. Accounting System

The Contractor shall develop a systematic method to record the business transactions of the Migrant Center that appropriately reflects the complexity of Migrant Center operations and the Department's requirements to be consistent with Exhibit B, Section 2(E). The Contractor may be required to implement and use bookkeeping and accounting systems acceptable to the Department.

3. Occupancy and Eviction

The Contractor shall terminate occupancy of a housing unit by any individual pursuant to the reasons and procedures pursuant to Program Regulations. Whenever possible, prior to eviction of any person pursuant to Program Regulations, the Contractor shall use its best efforts to correct the problem with the Resident or through the Resident Council. All proceedings with regard to this paragraph must be consistent with the Program Regulations.

4. Maintenance

The Contractor shall maintain the Migrant Center at all times in a safe and sanitary condition and in accordance with standards prescribed by State law, local ordinances, and the Department through this Agreement.

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The Contractor will also be responsible for the coordination and maintenance of any broadband internet systems that need to be installed, maintained, or replaced so to provide internet services to the residents of the Migrant Center. The Contractor shall contract accordingly with third parties to facilitate the installation, maintenance and replacement of related broadband internet services and provide said party reasonable access to the Migrant Center for the purpose of facilitating internet services within the Migrant Center. Any access to individual units must adhere to standard protocol, including but not limited to, providing residents proper notice of entry.

5. **Acquisitions and Property**

If property costing less than one hundred fifty dollars (\$150.00) per item is properly acquired with Agreement funds and is expected at the time of acquisition to be used indefinitely for the purpose for which it was purchased, title to such property must vest with the Contractor at the time of acquisition. If property acquired with Agreement funds has a cost of \$150.00 or more per item or is not expected at the time of acquisition to be used indefinitely for the purpose for which it was acquired, title to such property must vest with the Department. If property purchased under this Agreement is diverted to uses inconsistent with the purposes of this Agreement, the Contractor shall be liable for the replacement value of such property. If property with a unit price of \$5,000.00 or more is acquired or disposed of, the Contractor shall notify the Department within thirty (30) days of that acquisition or disposal so that the Department may properly account for acquisition or disposal of said property.

6. **Termination of Agreement**

- A. The Contractor may terminate this Agreement prior to the expiration date of this Agreement without cause, only upon conclusion of the on-season period and thirty (30) days prior written notice to the Department. This Agreement may be terminated by the Department at any time, upon thirty (30) days prior written notice to the Contractor.
- B. In the event that the Contractor terminates this Agreement, the Contractor shall provide the Department or the Department's designee with an option to assume responsibility for the continued operation of the Migrant Center, under the same terms and conditions contained in this Agreement, until another mutually agreeable location for the housing units and related facilities can be found and the housing units and related facilities are relocated to that site. The Department shall have one year from the date of exercise of said option to complete this operation and/or relocation.

7. **Reporting Requirements**

- A. Pursuant to Health and Safety Code Section 50717, the Contractor must provide the Department with a report that contains the data specified below about the agricultural workers that reside at the Migrant Center during the most recently concluded contract period. The purpose of gathering the data is to determine the needs of the residents

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EXHIBIT D

served at the Housing Center and how to better serve those needs. *The report shall be in an aggregate and anonymous format without any individual identifiable information.*

The report shall include the following information:

- a. The number of units rented to migratory and non-migratory households;
 - b. Where the migratory agricultural workers are migrating from;
 - c. Household incomes;
 - d. Race or ethnicity of members of each household;
 - e. Genders of members of each household;
 - f. The number of school-aged children, including the number of participants on the Migrant Education Programs and the number of residents enrolled in K-12 programs;
 - g. Information regarding the intended schooling for the children once the migrant center closes;
 - h. Where members of the household reside when not in the migrant center, and whether they own or rent;
 - i. If members of the household are elderly or disabled;
 - j. If the Migrant Center has an approved proposal allowing for an exemption for immediate family members of the agricultural worker to reside within a 50-mile radius of the Migrant Center during the off-season, the number and percentage of units allocated to non-migrant agricultural workers, and the number of children enrolled in the local school district, grades K-12 shall also be provided; and
 - k. Any additional information requested by the Department
- B. The Contractor shall notify the Department and provide a copy of any ordinances or Notices to Comply received from any regulatory body, including utility providers serving the Housing Center, which will affect the operation of the Housing Center, within five (5) days of receipt. Failure to provide said ordinances or notices will constitute a breach of this Agreement, and Contractor may be liable for any penalties the Department may receive as a consequence of failure to adequately provide it timely notice.
- C. The Contractor shall provide the Department with an annual financial audit for each fiscal year, due no later than nine (9) months after the end of each fiscal year, in accordance with generally accepted government auditing standards (GAGAS) and the requirements of the federal OMB Circular A-133.

8. **Inspections**

At all reasonable times during the term of this Agreement, and upon prior notice to the Contractor, representatives of the Department shall have access to the Contractor's premises for the purpose of ensuring compliance with this Agreement.

9. **Contractors and Subcontractors**

The Contractor shall not enter into any agreement with any subcontractor, for ten thousand dollars (\$10,000.00) or more, without the prior written approval from the Department. Such

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approval must not be unreasonably withheld by the Department. A subcontractor is not eligible to receive funds if they are not licensed by the appropriate regulatory body, not in good standing with the State of California, or is in any other way determined to be ineligible by the Department at its sole and reasonable discretion. Any agreement between the Contractor and subcontractors shall include all relevant terms and conditions of this Agreement and its attachments. In the event the Contractor purchases materials, services, or subcontracts performance of this Agreement, the Contractor shall adopt the following procedures which must be implemented in a manner consistent with State law:

- A. The Contractor shall invite bids for subcontracts, services and/or materials from as many prospective bidders as practical and receive no fewer than three (3). Any deviations from this process must be pre-approved by OMS prior to entering an agreement with a subcontractor.
- B. The Contractor shall award a rehabilitation (or construction) contract and/or any service or purchase agreement to the lowest responsible bidder or reject all bids; provided, however, that no awards must be made without prior written approval of the State.
- C. The Contractor shall award no subcontract, service contract and/or purchase agreement if the lowest responsible bid exceeds that amount allocated to the corresponding budget item in Exhibit B (unless modified in writing as permitted under this Agreement).
- D. The Contractor shall maintain and make available to the State detailed records and accounts of all subcontracts, purchases of materials and/or services made under the above procedure.

10. **Waiver**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded pursuant to this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the Department to enforce at any time the provisions of this Agreement, or to require at any time performance by the Contractor of any of the provisions contained herein, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce such provisions.

11. **Force Majeure**

Neither the Department nor the Contractor shall be deemed to be in default in the performance of the terms of this Agreement if either party is prevented from performing the terms of this Agreement by causes beyond its control, including, without being limited to: acts of God or the public enemy; interference, rulings or decisions by municipal, federal, state, or other governmental agencies, boards or commissions; any laws and/or regulations of such municipal, state, federal, or other governmental bodies; or any catastrophe resulting from flood, fire,

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explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other parties written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume operations under this Agreement.

12. **Licenses and Permits**

The Contractor shall procure or cause to be procured all permits and licenses necessary to accomplish the Work set forth in this Agreement and give all notices necessary and incident to the lawful performance of the Work. The Contractor shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and comply with all prevailing federal, state, and local laws, rules and regulations made pursuant to those federal, state, and local laws, which in any way affect the conduct and performance of the Work set forth in this Agreement.

13. **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. The 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 the interests of the Department.
- C. The Department, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the Department or its officers or employees for which the Contractor must provide indemnification under this Agreement. To the extent permitted by law, the Department shall authorize the Contractor or its insurer to defend such claims, suits or actions and shall provide it or its insurer, at the Contractor's expense, information, and assistance both necessary and available for such defense. The failure of the Department to give such notice, information, authorization, or assistance, shall not relieve the Contractor of its indemnification obligations.

14. **Disputes**

Except as otherwise provided in this Agreement, any dispute arising under or relating to the performance of this Agreement shall be reviewed and decided solely by the Department OMS

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Program Manager. The Manager's decision shall be provided to the Contractor in writing. The decision of the Program Manager shall be final and conclusive unless within thirty (30) days from the date of receipt of such a copy, the Contractor transmits to the Department a written appeal. Pending the final decision by the Director of the Department or Designee, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the written decision of the Program Manager, which is the subject of the Contractor's appeal.

15. **Audit/Retention and Inspection of Records**

The Contractor agrees that the Department or its delegate will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Contractor agrees to provide the Department or its delegate with all relevant information requested and shall 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 Public Contract Code ("PCC") § 10115, et seq., Government Code ("GC") § 8546.7 and 2 CCR §1896.60 et seq. The Contractor further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

The Contractor shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC § 10115.10.

16. **Insurance**

- A. The Contractor shall carry, maintain, and enforce general liability and property insurance in the amounts not less than \$1,000,000.00 per occurrence. Fire insurance must be in an amount to adequately protect the interests of the contractor and the State of California and its officers and employees. All liability coverage must name the State of California as Additional Insured. All property coverage must name the State of California as Loss Payee with a maximum \$25,000.00 deductible per occurrence. For additional information on the Department's Insurance Guidelines, please refer to our website at http://www.hcd.ca.gov/grants-funding/already-have-funding/docs/Insurance_Guidelines.pdf.
- B. The Contractor shall provide the Department with a current copy of the Certificate of Coverage upon every premium renewal.
- C. The Contractor shall pay premiums out of the General Operating Account and premiums will be treated as an operating expense.
- D. The Contractor shall investigate and furnish the owner with full reports on all accidents, claims, and potential claims for damage relating to the Project. The Contractor will cooperate with the owner's insurers in connection therewith.

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17. **Prevailing Wage**

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, Contractor shall ensure compliance with the requirements of the Labor Code commencing with Section 1720 (which pertains to the payment of prevailing wages and administered by the California Department of Industrial Relations).
- B. For the purposes 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 must be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Contractor and a licensed building contractor, Contractor shall serve as the "awarding body" as that term is defined in the Labor Code. Where 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 the prior written approval of the Department. 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.
- C. Notwithstanding any other provisions of this Agreement, after seeking appropriate recourse as set forth in the Section above, any controversial claim arising out of or relating to this Agreement or breach thereof shall be settled by arbitration at the election of either party in accordance with California Public Contract Code Section 10240 et seq., and judgment or award rendered by the arbitration may be entered in any court having jurisdiction thereof.