

## ATTACHMENT D: ESG APPLICANT CERTIFICATIONS

### *2019 Emergency Solutions Grants (ESG) Program Application*

#### *Volume 1, Tab 10: ESG Certifications*

I,

am authorized to act on behalf of

to certify that:

**Legal Authority** - The Applicant possesses legal authority to apply for and receive funds and carry out activities authorized by the Emergency Solutions Grants Program.

**Matching Funds** - The Applicant will provide the matching funds required by, and compliant with, 24 CFR §576.20, including a description of the sources and amounts of such supplemental funds.

**Discharge Policy** - The Applicant will participate in the development and implementation of, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions and systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge immediately resulting in homelessness for such persons.

**Confidentiality** - The Applicant has or shall develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under this Contract, and that the address or location of any family violence shelter project assisted will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public.

**Affirmatively Furthering Fair Housing** - The Applicant will ensure that it will use these funds in a manner that follows the State of Texas' Analysis of Impediments and Applicant will maintain records in this regard.

**Section 3** - The Applicant will comply with Section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135, except that homeless individuals have priority over other Section 3 residents in accordance with 24 CFR § 576.405(c).

#### **Certification Regarding Lobbying**

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the State, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Applicant confirms that the language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts and contracts under grants, loans, and cooperative agreements) and that all subawards shall certify and disclose according to the Government-wide Guidance for New Restrictions on Lobbying (Fed. Reg. December 20, 1989; 52306).

**Major rehabilitation/conversion** – If an emergency shelter’s rehabilitation costs exceed 75 percent of the value of the building before rehabilitation (regardless of the amount of ESG funds used), the building will be maintained as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation. If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the building will be maintained as a shelter for individuals experiencing homelessness and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion. In all other cases where ESG funds are used for renovation, the building will be maintained as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by an individual or family experiencing homelessness after the completed renovation. The Applicant will enter into a Land Use Restriction Agreement (“LURA”) to use the building as an emergency shelter for the amount of time determined in 24 CFR §576.102(c), and further explained in 10 TAC §7.3.

**Essential Services and Operating Costs** – If ESG funds are used for shelter operations or essential services related to street outreach or emergency shelter, the Applicant will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long as the Applicant serves the same type of persons (e.g., families with children, unaccompanied youth, veterans, disabled individuals, or victims of domestic violence) or persons in the same geographic area.

**Supportive Services** – The Applicant will assist individuals experiencing homelessness in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living), and other Federal State, local, and private assistance available for such individuals.

**Homeless Persons Involvement** - If this Application is funded, homeless individuals and families should be involved, to the maximum extent practicable, through employment, volunteer services, or otherwise, in constructing, renovating, maintaining, and operating

facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG.

**No Violation of Federal Law** - The Applicant certifies that this Application does not include proposed financial participation by a person who, during the five-year period preceding the date of the Application, has been convicted of violating a federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

**Obligation Period** – A Unit of government that is selected for funding must obligate ESG funds within 120 days from the date it receives an award letter from TDHCA.

**Drug-Free Shelter/Workplace** – The Applicant will have a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. The Applicant organization will ensure compliance with the Drug-Free Workplace Act of 1988.

**HMIS Participation, 24 CFR §576.400(f)** – The Applicant organization will meet HUD's standards for participation in a local Homeless Management Information System (HMIS) or comparable database (for Victim Services Providers and Legal Services Providers) and its standards for the collection and reporting of client-level information.

The Applicant organization will produce a report from HMIS an upload-required information into the SAGE reporting system for the Consolidated Annual Performance Evaluation and Report.

**Coordination with other Targeted Homeless Services, 24 CFR §576.400(b)** – The Applicant must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted to homeless people in the area covered by the Continuum of Care or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for that area.

**System and Program Coordination with Mainstream resources, 24 CFR §576.400(c)** – The Applicant must coordinate and integrate, to the maximum extent practicable, ESG funded activities with mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible. Refer to 24 CFR §576.400(b) for a list of mainstream resources to coordinate ESG activities.

**Centralized or Coordinated Assessment, 24 CFR §576.400(d)** – CoCs are required to establish a centralized or coordinated assessment system. Applicant will be required to participate in the centralized system. Applicant must maintain evidence of the use of, and written intake procedures for, the centralized or coordinated assessment systems(s) developed by the Continuum of Care. If Applicant is a legal or a victim service provider choosing not to use the CoC centralized or coordinated assessment system, Applicant must have and consistently apply written standards for assessment.

**Written Standards for Providing ESG Assistance, 24 CFR §576.400(e)** – The Applicant must establish and consistently apply within the Applicant's program, written standards for providing ESG assistance. If an Applicant is awarded funds, the selected Applicant must

provide TDHCA and THN a copy of the written standards for providing ESG assistance prior to contract execution. Refer to 24 CFR §576.400(d) for a discussion of the written standards.

**Evaluation of Program Participant Eligibility and Needs, 24 CFR §576.401** – The applicant must conduct an initial evaluation to determine the eligibility of each individual or family's eligibility for ESG assistance and the amount and types of assistance the individual or family needs to regain stability into permanent housing. These evaluations must be conducted in accordance with the centralized or coordinated assessment requirements set forth under 24 CFR §576.400(d) and the written standards established under 24 CFR §576.400(e) and all the guidelines outlined on 24 CFR §576.401(a).

**Terminating Assistance, 24 CFR §576.402** – If a program participant who receives ESG assistance violates program requirements, the Applicant may terminate the assistance in accordance with a formal process established by the Applicant that protects the rights of the individuals affected. Therefore, a formal process must be in place. This applies to all forms of ESG assistance. For more information, refer to the guidelines outlined in 24 CFR §576.402.

**Shelter and Housing Standards, 24 CFR §576.403** – The Applicant is responsible for the performance of inspections to ensure that shelter and housing occupied by ESG participants meets the following standards.

- **Lead Based Paint Act, 24 CFR §576.403(a)** – Lead-based paint remediation and disclosure applies to all ESG-funded shelters and all housing occupied by ESG participants. 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 the relevant subparts of the implementing regulations at 24 CFR Part 35, Subparts A, B, H, J, K, M and R apply to activities under this grant program. The Applicant must also comply with the Lead, Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745, where applicable.
- **Minimum Standards for Emergency Shelters and for permanent housing, 24 CFR §576.403(b)&(c)** – Emergency shelters that receive assistance for shelter operations are required to meet habitability standards. If ESG funds are used to help a program participant remain in or move into permanent housing, that housing must also meet habitability standards. The minimum standard for emergency shelters and permanent housing include standards for structure and material, access, space and security, interior air quality, water supply, sanitary facilities, thermal environment, illumination and electricity, food preparation, sanitary conditions and fire safety. Shelters renovated with ESG funds are also required to meet state or local government safety and sanitation-standards as applicable, and use energy-efficient materials including Energy Star and WaterSense products and appliances. Refer to 24 CFR §576.403 for details on the housing standards.
- **Access** – Shelters receiving ESG funds must also meet the accessibility standards under Section 504 of the Rehabilitation Act of 1973 (5 U.S.C. 794), The Fair Housing Act (42 U.S.C. 3601 et seq.) and Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189; 47 U.S.C. 155, 201, 218 and 255), and as further described in 10 TAC Chapter 1, Subchapter B.

**Conflicts of Interest, 24 CFR §576.404** – Applicant is expected to follow the conflict of interest standards outlined in 24 CFR §576.404 related to the provision of ESG assistance,

and procurement of goods and services. All contractors of the Applicant must comply with these same requirements.

**Faith-Based Activities, 24 CFR §576.406** – Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds. The State will not discriminate against an organization on the basis of the organization's religious character or affiliation.

An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief. When using ESG funds for the rehabilitation of structures, faith-based organizations will be expected to follow the guidelines outlined in 24 CFR §576.406.

**Environmental Review Responsibilities, 24 CFR §576.407(d)** –After the passage of legislation on July 5, 2012, that amends certain provisions of the HEARTH Act, 24 CFR Part 58 must be followed by Applicant to comply with environmental requirements.

**Procurement of Recovered Materials, 24 CFR §576.407(f)** – Applicant and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**Displacement, Relocation, and Acquisition, 24 CFR §576.408** – Consistent with the other goals and objectives of ESG, the Applicant must 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 a project assisted under ESG. Applicant must follow the requirements in 24 CFR §576.408 related to temporary relocation (not permitted), relocation assistance for displaced persons and real property acquisition requirements, and appeals, and the requirements identified in TDHCA's Consolidated Plan. ESG funds must comply with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (49 CFR Part 24) and policy guidance in Real Estate Acquisition and Relocation Policy and Guidance (HUD Handbook 1378).

**Recordkeeping and Reporting Requirements, 24 CFR §576.500** – Applicant will be required to show compliance with the program's regulations through the appropriate records, including documentation of homeless status, at risk of homelessness status and program participants' income. The Applicant must have policies and procedures to ensure the requirements outlined in 24 CFR §576.500 are met. In addition, sufficient records must be established and maintained for a minimum of five years to enable TDHCA and HUD to determine whether ESG requirements are met.

**Applicability of OMB Circulars** – Applicant must follow the policies, guidelines and requirements established in 2 CFR Part 200.

**Single Audit Requirement** – For fiscal years that begin after December 26, 2014, the audit requirements of 2 CFR §200.501 and UGMS (only for local governments) apply to the audit performed for that fiscal year including the higher federal audit threshold of \$750,000. If a single audit is required for an organization, a portion of the audit cost may be included in the proposed ESG budget. An Applicant or its Affiliates that do not exceed the required Single Audit threshold in federal expenditures is exempt from federal single audit requirements, but a local government must submit to the TDHCA its Single Audit if triggered by UGMS. All other entities must submit audited financial statements as part of the Application. Unless 2 CFR Part 200, Subpart F is triggered, audit costs may not be included in the proposed ESG budget.

**Financial Accountability 2 CFR Part 200** – Selected awardees will be expected to have a functioning accounting system that provides for each of the following:

- Accurate, current, and complete disclosure of the financial results of each federally sponsored project;
- Records that identify adequately the source and Application of funds for federally sponsored activities;
- Effective control over and accountability for all funds, property, and other assets;
- Comparison of outlays with budget amounts;
- Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the use of the funds for program purposes;
- Written procedures for determining the reasonableness, allocability, and allowability of costs; and
- Accounting records, including cost accounting records, which are supported by source documentation.

**Program Income – See 10 TAC §7.43** Program income includes gross income received by the Applicant or its Affiliates directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Program income received during the contract period must be applied as match. Program income received by the Applicant during the two years following the end of the contract period must be returned to the TDHCA. Except for income received from the sale of an Emergency Shelter during the use restriction period, income received by the Applicant after two years from the end of the Contract Term is not program income.

**Compliance with Fair Housing and Civil Rights in ESG Programs** –Applicant must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a), including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II and Title III of the American With Disabilities Act of 1990; Executive Order 13166 – Improving Access to Persons with Limited English Proficiency, the Equal Access to Housing Rule in HUD Programs Regardless of Sexual Orientation or Gender Identity, the Architectural Act of 1968, and the Age Discrimination Act of 1975.

**Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity** – On February 3, 2012 HUD revised its program regulations (77 FR 5662) to ensure

that individuals and families have access to HUD assisted and insured housing programs, regardless of sexual orientation, gender identity, or marital status.

**Affirmative Outreach - 24 CFR §576.407(b)** – Applicant must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis and must take appropriate steps to ensure effective communication with persons with disabilities. Affirmative outreach activities may include: (a) marketing programs to groups living in or receiving services in your service area that are under-represented as shown by your program data, (b) creating partnerships with community based agencies or non-profits that work with underrepresented and non-majority groups in your service area, and (c) translating documents advertising assistance, services and contact information into other languages prevalent in the community. Applicant must follow the requirements outlined in 24 CFR §576.407(b).

**Improving Access to Services for Persons with Limited English Proficiency (LEP) - 24 CFR §576.407(b)** – Executive Order 13166 seeks to improve access to federally assisted programs and activities for individuals who, as a result of national origin, are limited in their English proficiency. Applicant obtaining ESG funds shall take reasonable steps to ensure meaningful access to their programs and activities by individuals with limited English proficiency, regardless of the language spoken. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Applicant must follow the requirements outlined in 24 CFR §576.407(b). HUD published Final Guidance to Federal Financial Assistance Requirements Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons in the Federal Register on January 22, 2007 (72 FR 2732).

**Debarred and Suspended Parties** - Applicant certifies that it is not included in the Excluded Parties List System (EPLS) maintained by the General Services Administration (GSA). Applicant also certifies that it will not award any funds provided by this Contract to any party that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. Applicant agrees that, prior to entering into any agreement with a potential subcontractor procured by Applicant under this Contract that the verification process to comply with this requirement will be accomplished by checking the Excluded Parties List System at <https://www.sam.gov> or by collecting a certification from the potential subcontractor.

**Compliance with All Applicable Laws** – All ESG-funded activities will be carried out in accordance with all applicable laws and regulations of the U.S. Department of Housing and Urban Development and the Texas Department of Housing and Community Affairs.

Applicant acknowledges that any award by the Texas Department of Housing and Community Affairs pursuant to this Application may be terminated and payment withheld if this certification is inaccurate.

*Name of ESG Applicant*

*Name of Authorized Person*

*Authorized Signature*

*Date*

*Title*

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to follow the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than 100,000 for each such failure.*