

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(s)"). 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(s) for migratory workers and their families in accordance with the 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 of the Housing Center(s).
- C. The commonly accepted name and street address of the Housing Center(s) is

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«Center_Name» Migrant Center
«Ctr_Address»
«Ctr_City», CA «Ctr_Zip»

3. Term

A. The Contractor shall complete the activities as set forth in this Agreement and be fully funded, pursuant to Exhibit B, prior to June 30, 2019.

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 shall 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:

«Contractor»
«FIRST_NAME» «LAST_NAME»
«ADDRESS_HQ»
«CITY», CA «ZIP»
«Email»

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 \$xxx,xxx.00 for fiscal year 2017/18 and \$xxx,xxx.00 for fiscal year 2018/19, not to exceed \$xxx,xxx.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 shall be 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 an amendment to this agreement; which may necessitate a written justification.

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 or its authorized agent, funds not to exceed the total amount stated in Paragraph 1.A of this Exhibit.
- B. The Department further agrees to disburse said funds only for the approved purposes and itemized amounts as described in the Budget.
- C. 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 (but not limited to) the following items:

Signed timesheets, reserve accounts, tenant security deposit account, CARE account bank statements, rental income reports with copies of corresponding monthly rental income checks remitted to the Department as described in Exhibit D(2)(A), detailed ledgers that originate outside of the Contractor's sole control (i.e. through an Accounting Branch/Unit) with copies of all utilities bills, itemized receipts, Monthly Operations Statement and Requests for Reimbursement (invoices), and any other documentation relevant to the operation of the migrant

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farm labor center, as requested by the Department.

The Department cannot commence processing arrears until it has received the documents detailed above, therefore the Department shall 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.*

At the end of each fiscal year, 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), provided the Department certifies there is no need to address reasonable general maintenance requirements or repairs, rehabilitation, and replacement needs of the requesting migrant farm labor center(s) which affect the immediate health and safety of residents. The cumulative balance shall not exceed 10 percent of the operating funds annually committed to the Contractor by the Department.

At the end of each fiscal year, all remaining budget funds shall be deposited into an OMS reserve account not to exceed 10% of the operating funds annually committed to the Contractor by the Department, and the difference shall be disencumbered. Funds in the reserve account shall be used only for capital improvements such as replacing or repairing structural elements, furniture, fixtures, or equipment of the migrant farm labor center, the replacement or repair of which are reasonably required to preserve the migrant farm labor center. Withdrawals from the reserve account shall be made only upon receipt of the written approval of the Department detailing the amount and nature of expenditures. Withdrawals or expenditures made without prior Department approval are not subject to required repayment. This reserve account, all other reserve accounts, the tenant security deposit account, and the general operations account must be maintained separately from one another.

- D. In accordance with the State Contracting Manual (SCM) Volume 1, §7.32 "Advance Payments", advance payments are only permissible when authorized by statute; and where the OMS statutes do not provide for such funding. Therefore *the Contractor is not eligible to receive advance payments* for the performance of this Agreement.
- E. 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) and where accordingly such Work has been documented by the Contractor, or for equivalent services that have been rendered and documented by the Contractor.
- F. 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.

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3. 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.

4. 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 F of the Budget.
- 2) Notwithstanding Paragraph 3 of this Exhibit, these funds shall not be subject to transfer to other cost categories.
- 3) No advances shall be provided by the Department from these funds. 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).

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 G 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.

~~D. Before purchasing a motor vehicle, the Contractor shall submit documentation to the OMS Program Manager demonstrating that a competitive procurement process was followed and shall receive prior approval for the purchase from the Department.~~

5. 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

OMS – Non-Rural Development
2017 - 2019

Approval Date: ~~(to be inserted when final approved boilerplate)~~04/04/17

Prep. Date:

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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 legal and binding by the Department, the Department may exercise its option to cancel this Agreement or, at the Department's sole discretion, 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.

SAMPLE

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OMS 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 Housing Center(s) shall 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 shall be referred to as the "off-season."
- B. During the on-season:
- 1) All common facilities of the Housing Center(s) subject to this Agreement, other than the housing units, shall 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) Residents of the Housing Center(s), after prior notice to the Contractor, shall be permitted to use the common facilities of the Housing Center(s) 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 Housing Center(s) shall 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 shall not be inconsistent or incompatible with the purposes of this Agreement.

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 Housing Center(s), in accordance with rates established by the Department. Such receipts collected under this provision shall be remitted by the Contractor to the Department via check, along with a copy of the corresponding Monthly Rental Income Report, ~~by the 20th~~ no later than fifty (50) days after the end of each -of the following month to month, to the following address:

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

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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 shall be deposited into a separate account from the General Operating account, reserve account and CARE account. This account shall be regularly maintained by the Contractor.

C. Account Maintenance

The Contractor shall maintain and safeguard all bank accounts associated with the Housing Center(s) 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.

D. Accounting System

The Contractor shall develop a systematic method to record the business transactions of the Housing Center(s) that appropriately reflects the complexity of Housing Center(s) operations and the Department's requirements. 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 shall be consistent with the Program Regulations.

4. **Maintenance**

The Contractor shall maintain the Housing Center(s) 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.

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 shall 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 shall vest with the Department. If property purchased under this Agreement is diverted to uses inconsistent with the purposes of this Agreement, the Contractor

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shall be liable for the replacement value of such property. If property with a unit price of \$5,000 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. This Agreement may be terminated prior to the ending date of this Agreement without cause by the Contractor only upon conclusion of the on-season period, and the Department is provided thirty (30) days prior written notice. 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 Housing Center(s), 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. The Contractor shall provide the Department with written progress reports, Demographic Input Form, Monthly Occupancy Report, OMS Request for Disposal of Property, inventory of all OMS-owned equipment, Smog Inspection Report (as needed), and verification of annual opening and closing dates, at the times and in the format required 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 Centers, which will affect the operation of the Housing Centers, 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. ~~No later than January 1st~~ the Contractor shall provide the Department with an annual financial audit for ~~the previous fiscal year~~ 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.

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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 five thousand dollars (\$5,000.00) or more, without the prior written approval from the Department. Such approval shall not be unreasonably withheld by the Department. A subcontractor is not eligible to receive funds if they are not licensed, 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 or services or subcontracts performance of this Agreement, the Contractor shall adopt the following procedures which shall 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 the rehabilitation or construction contract and/or service or purchase agreement to the lowest responsible bidder or reject all bids; provided, however, that no awards shall 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

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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, 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

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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 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 delegatee 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 delegatee with all relevant information requested and shall permit the Department or its delegatee 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/financial-assistance/asset-management-and-compliance/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.

17. **Prevailing Wage**

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- 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 shall 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.

EXHIBIT F

SPECIAL TERMS AND CONDITIONS

Fiscal Year Start Up Request

1. General

- A. Due to the fact that the fiscal year and the OMS season do not coincide, and where the OMS season overlaps two fiscal years, upon the effective date of this Agreement, the Contractor may submit one (1) Fiscal Year Start Up Request for Reimbursement (“Start Up Request”) in an amount not to exceed twenty percent (20%) of the total Agreement amount, per annum, as stated in Paragraph 1.A. The purpose of the Start Up Request, is so that the Contractor is able to continue submitting and reconciling invoices for expenditures made, while also, still being able to fund operating and maintenance expenses. The Contractor will have an obligation to submit invoices to demonstrate that operating and maintenance expenses were in fact reconciled and paid with the Start Up Request.
- B. The Start Up Request for Reimbursement must be on the Department’s Monthly Operations Statement and Request for Reimbursement (invoice) form and expended in only the following categories: B. 200 Series: Operating Expenses and C. 300 Series: Maintenance Expenses.