

**HOMELESSNESS PREVENTION SERVICES GRANT AGREEMENT**

**BY AND BETWEEN  
CITY OF ARROYO GRANDE  
AND  
5CITIES HOMELESS COALITION**

***(ARPA REVENUE LOSS CATEGORY PROJECT)***

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Arroyo Grande, a municipal corporation organized under the laws of the State of California with its principal place of business at 300 E. Branch Street, Arroyo Grande, California 93420, County of San Luis Obispo, State of California ("City") and 5Cities Homeless Coalition, a California Nonprofit Corporation, with its principal place of business at 100 South 4<sup>th</sup> Street, PO Box 558, Grover Beach, CA 93483 ("Recipient"). City and Recipient are sometimes individually referred to herein as "Party" and collectively as "Parties."

**2. RECITALS.**

2.1 On March 10, 2021, the United States Congress passed, and President Joseph Biden signed into law, the American Rescue Plan Act ("ARPA");

2.2 ARPA established the Coronavirus State Fiscal Recovery Fund ("CSFRF") and Coronavirus Local Fiscal Recovery Fund ("CLFRF"), together known as the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program, which provide a combined \$350 billion in assistance to eligible state, local, territorial, and Tribal governments to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery.

2.3 The Interim Final Rule on SLFRF issued by the Department of the Treasury effective May 17, 2021, and the Final Rule issued by the Department of the Treasury effective April 1, 2022, (together the Interim Final Rule and the Final Rule are hereinafter referred to as the "Rule") provide the rules and guidelines for how the ARPA funds may specifically be spent. Further, the Rule allows for the City to transfer SLFRF funds to a Recipient who experienced public health impact or a negative economic impact due to the COVID-19 public health emergency.

2.4 The City received federal funding in the form of SLFRF under ARPA ("Funds") in response to the coronavirus ("COVID-19") pandemic. These funds may be used to fund services traditionally provided by a government.

2.5 Under ARPA, the City may provide grants to Beneficiaries to mitigate the negative economic impacts of the COVID-19 pandemic. Treasury has defined Beneficiaries to include individuals, households, 501(c)(3) or 501(c)(19) non-profit organizations, small businesses and impacted industries that experienced public health or negative economic impacts as a result of the COVID-19. Further, the City may use ARPA funds under the revenue loss project category to

obtain government services.

2.6 By letter dated April 30, 2024, Recipient submitted a proposal to provide homelessness prevention and supportive services in programs further described in Exhibit “A”, which include but are not limited to a winter warming shelter (“Programs”).

**3. TERMS.**

**3.1 Scope of Programs and Term; Restrictions on Use of Funds.**

3.1.1 General Use of Funds. Recipient promises and agrees to furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately operate the Programs. All Programs shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 ARPA Related Restrictions. The Funds paid under this Agreement are subject to the following conditions:

3.1.2.1 The Recipient agrees to abide by all terms and conditions set forth in ARPA, the Rule, additional accompanying guidance, and this Agreement.

3.1.2.2 All Funds must be obligated by December 31, 2024.

3.1.2.3 All Funds must be expended by December 31, 2026.

3.1.2.4 The use of Funds are to provide services traditionally provided by the City, including operation of homelessness prevention programs.

3.1.2.5 All Funds must be expended for Programs and all invoices for Programs submitted to the City for review by the City and closeout in accordance with ARPA requirements on or before October 31, 2026.

3.1.2.6 The Funds shall not be used for any activity that would violate City, state or federal statutory or decisional law, and must be spent in accordance with this Agreement and ARPA.

3.1.3 Term. The term of this Agreement shall be from the Effective Date to December 31, 2026, unless earlier terminated as provided herein. Recipient shall operate the Programs using the Funds within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if so desired; provided, however, City shall not extend the deadline for use of the Funds and City shall be under no obligation to provide additional funding of any kind for the Programs.

**3.2 Grant Funds.**

3.2.1 Grant Funds; Program Budget. Recipient shall receive Funds for expenses incurred in accordance with the Program Budget, such Funds not exceed TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00). The Program Budget, but not the total

amount of Funds to be provided, may be amended from time to time pursuant to an amended Program Budget submitted to the City by Recipient for approval of the City Manager or City Representative, as applicable, at their reasonable discretion.

3.2.2 Payment of Funds. Recipient shall submit to City a reimbursement request which indicates the amount, payee, exact use of, and Program Budget category for all expenses incurred by Recipient for Programs. The reimbursement request shall include copies of any invoices for which Funds are requested and proof of payment of the invoice. City shall, within 30 days of receiving such complete reimbursement request, review the reimbursement request and pay all non-disputed and approved charges. If the City disputes any of Recipient's requested reimbursements, the City shall give written notice to Recipient within thirty (30) days of receipt of an reimbursement request of any disputed fees set forth therein. Payment shall not constitute acceptance of any reimbursement request completed by Recipient. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Recipient shall not be reimbursed for any expenses unless authorized in writing by City.

### 3.3 **Responsibilities of Recipient.**

3.3.1 Certification. By signing the Agreement, Recipient certifies that the information provided in its June 21, 2023 proposal was true and accurate and that the Funds received pursuant to this Agreement will be used exclusively to mitigate the impacts of homelessness and for the purposes described herein.

3.3.2 Independent Contractor; Control and Payment of Subordinates. The Programs shall be performed by Recipient or under its supervision. Recipient will determine the means, methods and details of performing the Programs subject to the requirements of this Agreement. Recipient is receiving Funds in the form of a grant and is not being retained as an employee. Any personnel performing the Programs on behalf of Recipient shall not be employees of City and shall at all times be under Recipient's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Recipient or any of Recipient's officers, employees or agents, except as set forth in this Agreement. Recipient shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Programs under this Agreement and as required by law. Recipient shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.3 Schedule of Programs. Recipient shall perform the Programs in a prompt and timely manner and in accordance with the Scope of Programs and Restrictions on Use of Funds set forth above. Recipient represents that it has the professional and technical personnel required to perform the Programs expeditiously. Upon request of City, Recipient shall provide a more detailed schedule of anticipated performance to meet all applicable deadlines.

3.3.4 Substitution of Key Personnel. Recipient has represented to City that certain key personnel will perform and coordinate the Programs under this Agreement. Should one or more of such personnel become unavailable, Recipient may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Recipient cannot agree as to the substitution of key personnel, City shall be entitled to terminate this

Agreement for cause. The key personnel for performance of this Agreement are as follows: Janna Nichols, Executive Director

3.3.5 City's Representative. The City hereby designates Matthew Downing, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all documents and reports submitted by Recipient but not the authority to enlarge the Scope of Programs or change the amount or source of Funds due to Recipient under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Programs or change the Recipient's amount or source of Funds subject to the provisions contained in this Agreement. Recipient shall not accept direction or orders from any person other than the City Manager, City's Representative or their designee.

3.3.6 Recipient's Representative. Recipient hereby designates Janna Nichols, Executive Director, or his/her designee, to act as its representative for the performance of this Agreement ("Recipient's Representative"). Recipient's Representative shall have full authority to represent and act on behalf of the Recipient for all purposes under this Agreement. The Recipient's Representative shall supervise and direct the Programs, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Programs under this Agreement.

3.3.7 Reserved.

3.3.8 Standard of Care; Performance of Employees. Recipient shall perform all Programs under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Recipient represents and maintains that it is skilled in the professional calling necessary to perform the Programs. Recipient warrants that all employees and subrecipients shall have sufficient skill and experience to perform the Programs assigned to them. Recipient represents that it, its employees and subrecipients have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Programs, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Recipient shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Recipient's failure to comply with the standard of care provided for herein. Any employee of the Recipient or its subrecipients who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Programs, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Programs in a manner acceptable to the City, shall be promptly removed from the Programs by the Recipient and shall not be re-employed to perform any of the Programs.

3.3.9 Period of Performance.

3.3.9.1 Recipient shall perform all Programs and expend the Funds in accordance with the deadlines imposed under this Agreement within the Term set forth above ("Performance Time"). Recipient agrees that if the Programs are not completed within the aforementioned Performance Time and/or pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Recipient shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Recipient and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Recipient to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

### 3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Recipient shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the use of the Funds or performance of the Programs, including but not limited to the Federal Requirements (as such term is herein defined) set forth in Exhibit "A-1" to this Agreement, which is incorporated herein by this reference and all Cal/OSHA requirements, and shall give all notices required by law. Recipient shall be liable for all violations of such laws and regulations in connection with the Programs and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause and seek repayment of any Funds improperly spent.

3.3.10.2 Employment Eligibility; Recipient. Recipient certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subrecipients and sub-subrecipients to comply with the same. Recipient certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Recipient represents that it is an equal opportunity employer and it shall not discriminate against any subrecipient, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Recipient shall also comply with all relevant provisions of City's Minority Business

Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Recipient must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Recipient shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Recipient, its subrecipients, or others for whom Recipient is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Recipient shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Programs including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Recipient must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Programs are to be conducted, regulating water quality and storm water discharges. City may seek damages from Recipient for delay in completing the Programs caused by Recipient's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Recipient shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Programs, the Recipient shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

### 3.3.11 Insurance.

3.3.11.1 Time for Compliance. Recipient shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Recipient shall not allow any subrecipient to commence work on any subcontract until it has provided evidence satisfactory to the City that the subrecipient has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Recipient, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Recipient agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Programs Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Programs Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Recipient's profession with limits of not less than \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Recipient shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Recipient; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Recipient shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability. (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): 1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must “pay on behalf of” the insured and include a provision establishing the insurer’s duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Recipient or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Recipient hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subrecipients.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Recipient, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Recipient shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.



3.3.11.8 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Recipient acknowledges and agrees that actual or alleged failure on the part of the City to inform Recipient of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Recipient, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Recipient pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Recipient or City will withhold amounts sufficient to pay premium from Recipient payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Recipient to provide complete copies of all insurance policies in effect for the duration of the Agreement.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Recipient from liability in excess of such coverage, nor shall it limit the Recipient's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Recipient shall report to the City, in addition to Recipient's insurer, any and all insurance claims submitted by Recipient in connection with the Programs under this Agreement.

3.3.11.12 Insurance for Subrecipients. Recipient shall include all subrecipients engaged in any work for Recipient relating to this Agreement as additional insureds

under the Recipient's policies, or the Recipient shall be responsible for causing subrecipients to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subrecipient's policies. All policies of Commercial General Liability insurance provided by Recipient's subrecipients performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Recipient shall not allow any subrecipient to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subrecipient's compliance with all insurance requirements under this Agreement, to the extent applicable. The Recipient shall provide satisfactory evidence of compliance with this section upon request of the City.

### 3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Recipient is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Programs are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Recipient agrees to fully comply with such Prevailing Wage Laws. City shall provide Recipient with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Recipient shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Programs available to interested parties upon request, and shall post copies at the Recipient's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Recipient shall therefore comply with such Labor Code sections to the fullest extent required by law. Recipient shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Programs are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Recipient and all subrecipients must be registered with the Department of Industrial Relations ("DIR"). Recipient shall maintain registration for the duration of the Agreement and require the same of any subrecipients.

3.4.3 Compliance Monitoring. This Agreement may also be subject to compliance monitoring and enforcement by the DIR. It shall be Recipient's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Recipient or any subrecipient that affect Recipient's performance of services, including any delay, shall be Recipient's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Recipient caused delay and shall not be compensable by the City. Recipient shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Recipient

or any subrecipient.

3.4.4 Labor Certification. By its signature hereunder, Recipient certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Programs.

### 3.5 **Violations and Termination of Agreement.**

3.5.1.1 Effect of Violations of Agreement. If the City discovers that Recipient has breached any part of this Agreement or made a material misrepresentation, or otherwise provided false information in its proposal or any document provided to City to support Recipient's request or a reimbursement, or Recipient has misused the Funds or used them for an ineligible expenditure, Recipient shall return the entirety of the Funds to the City within ten (10) calendar days of the City's written notice. The City's decision shall be final. Additionally, the City shall have all other remedies besides the remedy provided herein to enforce this Agreement and its Program.

3.5.1.2 Specific Performance. Recipient agrees that, by accepting Funds, the City has the legal right, and that all necessary conditions have been satisfied, to specifically enforce Recipient's obligations pursuant to this Agreement.

3.5.1.3 Grounds for Termination. Notwithstanding anything to the contrary herein, City may, by written notice to Recipient, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Recipient of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination for cause, Recipient may be required to refund any portion of the Funds that have been spent contrary to this Agreement and Recipient shall be entitled to no further compensation. Recipient may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.4 Effect of Termination. If this Agreement is terminated as provided herein, City may require Recipient to provide all finished or unfinished Documents and Data and other information of any kind prepared by Recipient in connection with the performance of Programs under this Agreement. Recipient shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.5 Mitigation for Programs. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### 3.6 **Indemnification.**

3.6.1 To the fullest extent permitted by law, Recipient shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or

omissions, or willful misconduct of Recipient, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Programs or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Recipient's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Recipient, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Recipient's obligation to defend, indemnify, and/or hold harmless arises out of Recipient's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Recipient's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Recipient, and, upon Recipient obtaining a final adjudication by a court of competent jurisdiction, Recipient's liability for such claim, including the cost to defend, shall not exceed the Recipient's proportionate percentage of fault.

### 3.7 General Provisions.

#### 3.7.1 Accounting Records.

3.7.1.1 Recipient shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Recipient shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Recipient shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.1.2 Recipient shall maintain true, proper, and complete documentation that evidences Recipient's expenditures for approved uses of Funds ("Records") for five (5) years after all funds have been expended or through December 31, 2026, whichever date is later. Recipient shall make available to City such Records within ten (10) calendar days of the City's request. Recipient understands that other agencies, including, without limitation, the federal government, is authorized to audit City's use of ARPA funds. Recipient shall use its best efforts to cooperate, promptly, in any audit by any agency or entity, including a City audit. This Section shall survive the termination or expiration of this Agreement.

3.7.1.3 Recipient shall provide notification to City of any audits or investigations including results, findings, and/or liens

#### 3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Contractors. Recipient is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Recipient is in compliance with the California Labor Code, Recipient shall only utilize its employees to provide the Programs. Recipient may not provide the services through any independent contractor, subcontractor or subrecipient ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Recipient represents and warrants that all personnel

who perform the Programs on Recipient's behalf are Recipient's employees, and that Recipient complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Recipient shall not use any Subcontractor to provide the Programs, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Recipient to use a Subcontractor, Recipient shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subrecipients without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Recipient:	5Cities Homeless Coalition 100 South 4 <sup>th</sup> Street, PO Box 558 Grover Beach, CA 93483 ATTN: Janna Nichols, Executive Director
City:	City of Arroyo Grande 300 E. Branch Street Arroyo Grande, CA 93420 ATTN: Matthew Downing, City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Recipient under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Recipient on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Recipient shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. Recipient shall have no right to retain or fail to provide to City any such documents pending resolution of a dispute. In addition, Recipient shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Programs

under this Agreement, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Recipient shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subrecipients. Recipient shall require all subrecipients to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subrecipient prepares pursuant to this Agreement. Recipient represents and warrants that Recipient has the legal right to license any and all Documents & Data. Recipient makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Recipient or its subrecipients, or those provided to Recipient by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Agreement or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Agreement without employing the services of Recipient shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Agreement, it shall remove the Recipient's seal from the Documents & Data and indemnify and hold harmless Recipient and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Recipient shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Recipient shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Recipient, a party for whom the Recipient is legally responsible or liable, or anyone approved by the Recipient.

3.7.4.4 Indemnification. Recipient shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Recipient in connection with the performance of this Agreement shall be held confidential by Recipient. Such materials shall not, without the prior written consent of City, be used by Recipient for any purposes other than the performance of the Programs. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Programs. Nothing furnished to Recipient which is otherwise known to Recipient or is generally known, or has become known, to the related industry shall be deemed confidential. Recipient shall not use City's name or insignia, photographs, or any publicity pertaining to the Programs provided under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Luis Obispo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Recipient must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Recipient. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Recipient shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Fund Other Beneficiaries. City reserves right to fund other beneficiaries in connection with services similar to the Programs.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Recipient shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Recipient shall not subcontract any portion of the Programs required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Recipient include all personnel, employees, agents, and subrecipients of Recipient, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of

this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Taxes. The City and Recipient expressly agree that the Recipient shall be responsible for all taxes that are associated in any way with the receipt or use of the Funds.

3.7.18 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.7.19 Prohibited Interests. Recipient maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Recipient, to solicit or secure this Agreement. Recipient warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Recipient, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Recipient further agrees to file, or shall cause its employees or subrecipients to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Programs. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.7.20 Authority to Enter Agreement. Recipient has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.22 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

3.8 **Federal Provisions**. Funding for the Programs is provided, in whole or in part, by an agency of the federal government; Recipient shall also fully and adequately comply with the provisions included in Exhibit "A-1" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

**[SIGNATURES ON NEXT PAGE]**



**SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF ARROYO GRANDE AND  
5CITIES HOMELESS COALITION**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written (the "Effective Date").

**CITY OF ARROYO GRANDE**

**5CITIES HOMELESS COALITION**

*Approved By:*

\_\_\_\_\_  
Matthew Downing, City Manager

By: \_\_\_\_\_  
Ken Dalebout, President

*Approved as to Form:*

\_\_\_\_\_  
Best Best & Krieger LLP  
Isaac Rosen, City Attorney

By: \_\_\_\_\_

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

*Attested By:*

\_\_\_\_\_  
City Clerk

**EXHIBIT “A”**  
**PROGRAMS**

## City of Arroyo Grande Proposal



This request is to support 5CHC’s housing assistance program which offers direct financial assistance for Arroyo Grande residents to pay for housing and immediate needs; and the operation of our interim non-congregate shelters (totaling 50 beds) located in the neighboring City of Grover Beach. This request is based on the priorities of the County's recently adopted plan to address homelessness.

### **Housing Assistance Request:**

We are requesting \$50,000 to provide direct financial assistance to support housing and utility needs through our housing assistance program for residents of Arroyo Grande. Funds will be used to help those experiencing homelessness to obtain housing through Rapid Re-Housing and those at-risk of homelessness to avoid eviction through our Homeless Prevention Program. This contribution from Arroyo Grande will also help us to provide the local match required for other federal and state funds, which require a dollar-for-dollar local match. These funds will be fully expended by December 2026, unless an earlier date is requested.

In the first 9 months of this fiscal year (since July 2023) 5CHC has provided housing assistance to residents of Arroyo Grande as follows:

### **Rapid Re-Housing Move-in Assistance (Deposit and Rent):**

- 13% of 5CHC RRH assistance has supported Arroyo Grande residents
- 16 households, 26 people
- \$59,883 to-date, averaging \$3,743 per household

### **Homeless Prevention (Deposit and Rent):**

- 23% of 5CHC HP assistance has supported Arroyo Grande residents
- 25 households, 59 people
- \$91,155 to-date, averaging \$3,636 per household

### **Shelter Request:**

We are requesting \$150,000 to provide shelter and housing navigation services through our 20-bed Cabins for Change Program (located at 1523 B Longbranch, GB) and our

soon-to-open 30-bed Balay Ko on Barca Program (located at 998 Barca Street, GB). Both locations will operate with the same program requirements with a goal of assisting participants to find permanent housing within 90 days. Both sites will pull participants from the same waitlist, which currently has 313 individuals awaiting services. This funding request amounts to 2.86% of the 5CHC's shelter program two-year budget. Funds will be fully expended by December 2026, unless an earlier date is requested.

**Cabins for Change**

- 20-Bed Shelter Opened in December 2022
- Average Length of Stay – 106 days
- Total participants 88 - 5% of participants from Arroyo Grande
- Total housed – 46, 68% of participants
  - Arroyo Grande Participants - 2 currently enrolled, 5 have been housed
  - Arroyo Grande Participants - 43% chronically homeless at entry
  - Arroyo Grande Participants - 29% over the age of 60
- Current wait list 313 - 12% of the applicants report being from Arroyo Grande

EXHIBIT "A-1"

FEDERAL REQUIREMENTS

1. Recipient acknowledges that the funding for the agreement to which this Exhibit is attached ("Agreement") is from federal, state, and/or City funds, including but not limited to American Rescue Plan Act State and Local Fiscal Recovery Funds ("ARPA"). Recipient shall comply with the requirements of the funding source, which includes but is not limited to ARPA, as applicable to projects funded under the Revenue Loss category.
2. With respect to any conflict between the funding source requirements, this Exhibit, the terms of the Agreement, or the provisions of state law, or city law or regulation, the more stringent requirement shall control. In the event of an irreconcilable conflict between the requirements of the funding source and the Agreement, the requirement of the funding source shall control and shall amend the Agreement to the extent, and only to the extent, of the irreconcilable conflict.
3. Recipient agrees to accept any additional conditions governing the use of funds or performance of programs as may be required by executive order, federal, state or local statute, ordinance, rule or regulation or by policy adopted or issued by the State or Federal government, or the awarding Federal agency.
4. Recipient shall comply with the assurances and certifications, which are attached hereto and incorporated herein.

*(Specific Assurances and Certifications begin on next page.)*

## SPECIFIC ASSURANCES AND CERTIFICATIONS

### 1. ASSURANCES

In performing its responsibilities under this Agreement, Recipient assures that it will fully comply with the following provisions as applicable:

#### 1.1 American Rescue Plan Act - Generally

##### 1.1.1 **Recipient** shall comply with the requirements of

(a) section 602 and 603 of the Social Security Act, regulations adopted by the U.S. Department of Treasury pursuant to sections 602(f) and 603(f) of the Act;

(b) Coronavirus State and Local Fiscal Recovery Funds Final Rule, codified at 31 CFR Part 35,

(c) U.S. Department of the Treasury Coronavirus State and Local Fiscal Recovery Fund Award Terms and Conditions, and

(d) Guidance issued by Treasury regarding the foregoing, all of which are expressly incorporated herein by reference.

1.1.2 **Recipient** agrees and acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, contractor, or any other party pertaining to any matter resulting from the Agreement.

#### 1.2 Federal regulations applicable to ARPA-funded Agreements

Recipient shall comply with the requirements of federal regulations applicable to this Agreement funded through ARPA, including, without limitation, the following:

1.2.1 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, other than such provisions as Treasury may determine are inapplicable and subject to such exceptions as may be otherwise provided by Treasury; including without limitation: (i) the requirement that costs be allowable under 2 CFR 200.403, and (iii) comply with the Single Audit Act under Subpart F – Audit Requirements of the Uniform Guidance.

1.2.2 Universal Identifier and System for Award Management (SAM), 2 CFR Part 25, pursuant to which the award term set forth in Appendix A to 2 CFR Part 25 is hereby incorporated by reference.

1.2.3 **Recipient** Integrity and Performance Matters, pursuant to which the award term set forth in 2 CFR. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

1.2.4 Governmentwide Requirements for Drug-Free Workplace, 31 CFR Part 20.

1.2.5 New Restrictions on Lobbying, 31 CFR Part 21.

1.2.6 Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

1.2.7 Generally applicable federal environmental laws and regulations and all other applicable Federal, State, and City laws, executive orders, regulations and policies governing this Agreement.

### 1.3 Non-Discrimination

Recipient shall comply with the statutes and regulations prohibiting discrimination, including but not limited to:

1.3.1 Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166; directives; circulars; policies; memoranda and/or guidance documents.

1.3.2 The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

1.3.3 Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) (24 CFR Parts 8-9);

1.3.4 Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 CFR Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.

1.3.5 Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

1.3.6 **Recipient** acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English Proficiency (LEP). **Recipient** understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, **Recipient** shall

(a) Initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities, which may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the **Recipient's** programs, services, and activities under the Agreement.

(b) Consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services and activities under the Agreement. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on LEP, please visit <http://www.lep.gov>.

(c) Acknowledge and agree that compliance with this assurance constitutes a condition of continued receipt of federal financial assistance and is binding upon **Recipient** and **Recipient's** successors, transferees and assignees for the period in which such assistance is provided.

(d) Acknowledge and agree that it must require any contractors, subcontractors, successors, transferees, and assignees to comply with the assurances f(ii) and f(iii), above, and agrees to incorporate the following language in every contract or agreement subject to Title VI between **Recipient** and its subcontractors, successors, transferees, and assignees:

*The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.*

#### 1.4 Protections for Whistleblowers.

1.4.1 In accordance with 41 U.S.C. § 4712, **Recipient** may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

1.4.2 The list of persons and entities referenced in the paragraph above includes the following:

- Congress;
- (a) A member of Congress or a representative of a committee of Congress;
  - (b) An Inspector General;
  - (c) The Government Accountability Office;
  - (d) A Treasury employee responsible for contract or grant oversight or management;

(e) An authorized official of the Department of Justice or other law enforcement agency;

(f) A court or grand jury; or

(g) A management official or other employee of **Recipient**, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct

1.4.3 **Recipient** shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

1.5 Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1.6 Reducing Text Messaging While Driving.

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subconsultants, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

1.7 Conflicts of Interest.

Recipient shall take all necessary affirmative steps to prevent conflicts of interest as required by 2 CFR § 200.318 and the City's conflict of interest policy, including but not limited to written disclosure to the City of any potential conflict of interest.

1.8 Records and Access.

1.8.1 **Recipient** shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, guidance issued by Treasury regarding the foregoing, and 2 CFR 200.334-.338.

1.8.2 **Recipient** shall provide the Department of Treasury, Inspectors General, the Comptroller of the United States, City or any of their authorized representatives access to any documents, papers, or other records of the **Recipient** which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions, and to allow such parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed and access to construction or work sites pertaining to the Services being completed under the Agreement.

1.8.3 Records shall be maintained by **Recipient** for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later, with such date anticipated by **Recipient** and the City to be December 31, 2026.

*(Certifications begin on next page.)*



2. CERTIFICATIONS

2.1 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS.

As required by Executive Orders 12549 and 12689, the undersigned, on behalf of the Recipient, certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Further, the undersigned agrees this is a covered transaction under 2 CFR Part 180 and will, consequently, include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 CFR Part 180, subpart B) that the Agreement is subject to 2 CFR Part 180 and Treasury’s implementing regulation at 31 CFR Part 19.

2.2 FALSE STATEMENTS.

Recipient understands that making false statements or claims in connection with this Agreement is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

2.3 CERTIFICATION OF NON-DELINQUENCY OF FEDERAL DEBT.

The undersigned, on behalf of the Recipient, certifies to the best of his or her knowledge and belief that the Recipient is not delinquent in the repayment of any Federal debt as required by 28 U.S.C.S. § 3201.

2.4 PERIOD OF PERFORMANCE

Notwithstanding any other expiration date provided in the Agreement, the period of performance for the City’s award ends on December 31, 2026. Recipient acknowledges that failure to submit any documentation to the City (including but not limited to invoices, compliance reports, change orders, progress reports, or backup documentation supporting invoices) at least sixty days prior to this date and/or failure to complete any activity required under the Agreement prior to the end of the period of performance may result in loss of federal funds for the project and shall constitute an event of default under the Agreement.

*As the duly authorized representative of the Recipient, I hereby certify that the Recipient will comply with the requirements of this Exhibit including the above certifications and has the authority to enter in to this Exhibit to the Agreement.*

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title of Authorized Representative