

**AGREEMENT BETWEEN THE CITY OF FLAGSTAFF**

**and**

**[REDACTED] (AGENCY)**

**for the**

**[REDACTED] PROJECT**

**THIS AGREEMENT (the "Agreement") is made and entered into by and between the City of Flagstaff, a municipal corporation (the "City"), and [REDACTED], an Arizona nonprofit corporation with offices at [REDACTED] (the "Agency" or "Subrecipient").**

**RECITALS**

- A. Sections 602(b) and 603(b) of the Social Security Act, as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021), authorizes the U.S. Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus Local Fiscal Recovery Fund (Recovery Funds).
- B. The City is a recipient of certain Recovery Funds and is authorized to utilize the Recovery Funds in accordance with the rules and regulations promulgated by Treasury. Specifically, the procurement for distribution of the Recovery Funds requiring compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 (Uniform Guidance).
- C. The Uniform Guidance allows for a non-competitive procurement where the public exigency or emergency will not permit a delay from publicizing a competitive solicitation. 2 C.F.R. § 200.320.
- D. The City of Flagstaff Procurement Code Manual (Procurement Code) authorizes Emergency Procurement where "public health, welfare or safety would be greatly hampered if the prescribed formal or informal purchasing procedure would cause an undue delay in procurement of the needed item or service." Procurement Code, Section 19.1(D).
- E. The City desires to utilize a portion of its Recovery Funds for the [REDACTED] **(the Project). Funds will be used for [REDACTED].** The Agency is willing and has the resources to implement the Project.
- F. The Project is eligible for expenditure of the Recovery Funds under the Uniform Guidance, "Appendix 1: Expenditure Categories." The procurement of the Project complies with both the Uniform Guidance and Procurement Code provisions.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

## 1. AGENCY'S SCOPE OF SERVICES

- 1.1 Scope of Services. The Agency agrees to be a subrecipient of the Recovery Funds and complete the Project as described in the Special Conditions of the Agreement, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.2 Changes in Scope of Services. No change(s) shall be made to the Scope of Services except by written Agreement amendment. To obtain an Agreement amendment, the Agency must submit a revised Scope of Services with a written request for authorization for a Scope of Services amendment. If authorized, an Agreement amendment shall be drafted pursuant to the Procurement Code and must be approved by the City Council, and executed by duly authorized signatories, before the amendment will become effective.

## 2. AMOUNT AND NATURE OF ASSISTANCE BY CITY

- 2.1 Agreement Amount. Subject to all of the terms, covenants, and conditions of this Agreement, the City will enter into an Agreement with the Agency for a subaward amount not to exceed [REDACTED] (\$ [REDACTED]) for the services described in **Exhibit A** for reimbursement for the period of performance between [REDACTED] and [REDACTED]. The City shall serve as the fiscal agent for the Recovery Funds. The Agency agrees to be responsible for all sums in excess of this amount necessary to complete the Project. The Subrecipient agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available. The Agency shall not use the Recovery Funds received from the City in any other manner except as provided in this Agreement. Wrongful expenditure of the Recovery Funds will constitute a breach of this Agreement and the City shall have the right to terminate this Agreement under the terms and conditions specified in this Agreement.

The City shall:

Clearly identify every subaward to the Agency as a subaward and include the following information at the time of the subaward and include any changes in subsequent subaward modifications. When the information is not available, the City must provide the best information available to describe the Federal award and subaward:

- A) Federal Award Identification;
  - 1) Subrecipient name (which must match registered name in DUNS);
  - 2) Subrecipient's DUNS number;
  - 3) Federal Award Identification Number (FAIN);
  - 4) Federal Award Date;
  - 5) Subaward Period of Performance Start and End date;
  - 6) Amount of Federal Funds Obligated by this action;

- 7) Total Amount of Federal Funds Obligated to the Subrecipient;
  - 8) Total Amount of the Federal Award;
  - 9) Federal award Project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
  - 10) Name of Federal awarding agency, pass-through entity, and contact information for awarding official;
  - 11) CFDA Number and name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
  - 12) Identification of whether the award is Research & Development; and
  - 13) Indirect cost rate for the Federal award (including if the de minimis rate is charged. All requirements imposed by the pass-through entity on the Subrecipient so that the Federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award.
- B) Any additional requirements that the pass-through entity imposes on the Subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
- C) Any approved federally recognized indirect cost rate negotiated between the Subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the Subrecipient or a de minimis indirect cost rate as defined in the Code of Federal Regulations.
- D) A requirement that that Subrecipient permit the pass-through entity and auditors to have access to the Subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of 2 C.F.R. §200.331 and § 200.300, "Statutory and national policy requirements," through 2 C.F.R. § 200.309, "Modifications to Period of performance," and Subpart F, "Audit Requirements"; and
- E) Appropriate terms and conditions concerning closeout of the subaward.
- 2.2 Payments. Payment by the City to the Agency for services and other expenses related to the administration of the Project will be provided on a reimbursement basis. Reimbursement may be requested as frequently as monthly, but not less than quarterly. Reimbursement will be paid in dollar amounts approved by the City for completed work. To request reimbursements, the Agency shall submit a Request for Payment and Disbursement Form, attached as **Exhibit B** and incorporated by reference in this Agreement. The Agency must submit a final reimbursement request for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked FINAL and include a copy of the Property Control Form. All reports shall be submitted to the contact persons as described in the Notice

Section of this Agreement. All payment requests must be submitted by line item and activity in conformance with the Budget, attached as **Exhibit C** and incorporated by reference in this Agreement. All claims against this Agreement shall be made only for expenses incurred within the Agreement time-period defined in this Agreement. The Agency may use funds to reimburse allowable costs of activities for purchases made between the date of the Agreement and the end of the Period of Performance, December 31, 2026. Final payment invoices must be received no later than sixty (60) days after completion of the Scope of Work or Agreement time-period, whichever comes first. No payments shall be made on invoices received after that date.

- 2.3 Changes in Budget. Any variance from the Budget must be made through a budget amendment. To obtain a budget amendment, the Agency must submit a new budget to the City with a written request for authorization for a budget amendment. The City Housing Director or her designee is authorized to approve budget amendments as long as the amendment does not increase the total budget of the Project.
- 2.4 Indirect Costs. If indirect costs are charged, the Agency will develop an indirect cost allocation plan for determining the Agency's appropriate share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.

### **3. CERTIFICATION OF COMPLETION**

Upon satisfactory completion of the Close-Out Report and submission of all required documentation, the City shall provide the Agency with a letter that certifies completion. The certification is conclusive determination that the Agency has satisfactorily completed its contractual obligations. The City shall not unreasonably withhold such certification.

### **4. AGREEMENT REQUIREMENTS**

- 4.1 Agreement Administration. The Agency has obtained official authorization from its governing body in the form of a resolution, motion, or similar action authorizing the person identified in the Notice Section of this Agreement to administer and perform the required duties for the administration of this Agreement. Such authorization is attached as **Exhibit D** and incorporated by reference in this Agreement.
- 4.2 Agreement Commencement, Completion, and Renewal. Specific authorization to proceed with the work described in the Scope of Work will be provided by the City in the form of a Notice to Proceed within reasonable time after the effective date of this Agreement. The Agency cannot request reimbursement without such authorization. The Agency may use funds to reimburse allowable costs of activities defined in the Scope of Work. The Agency agrees to complete the expenditure of the Recovery Funds for the period of performance between [REDACTED] and [REDACTED], per the Schedule of Completion, attached as **Exhibit E** and incorporated by reference in this Agreement. This Agreement may be renewed in writing for a time period not to exceed three hundred sixty-five (365) days at the City's discretion. The Housing Director may execute the written agreement to renew without further City Council action. Notwithstanding any other language in this

Agreement, this Agreement shall remain in effect during any period that the Agency has control over Recovery Funds.

- 4.3 Agreement Extension. No payments will be made to the Agency for cost incurred after the Agreement time-period. To obtain a time extension, the Agency must submit a new Schedule of Completion to the City with a written request for authorization for an Agreement time extension. The City, through the Housing Director or her designee, will respond to such written request within ten (10) business days.

## 5. ADMINISTRATIVE REQUIREMENTS

- 5.1 Accounting. The Agency shall comply with the requirements and standards of Office of Management and Budget (OMB) and guidance in subparts A through F of 2 C.F.R. part 200 and shall adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The Agency's financial management system shall include, at a minimum, accurate, current, and complete disclosures of expenditures of the Recovery Funds; records which adequately identify the source and application of Recovery Funds provided for financially assisted activities; effective control over and accountability for Recovery Funds, real and personal property, and other assets; comparison of actual outlays with budgeted amounts; and records supported by source documentation. The Agency shall maintain Recovery Funds received under this Agreement in separate ledger accounts and not mix funds with other sources; manage funds according to applicable Federal regulations for administrative requirements, cost principles, and audits; and maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are: Financial Managements, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied (it applies to all sources of funds).
- 5.2 Procurement. The Agency shall procure all materials, property, or services in accordance with the requirements of the Uniform Guidance and 2 C.F.R. § 200.317 through 2 C.F.R. § 200.327. The Agency's procurement outreach and documentation shall be governed by the price limits set forth in the Procurement Code , notwithstanding OMB Circular A-110. All procurement undertakings must make an effort to utilize Minority and Women Owned Business Enterprises. The Agency shall maintain an inventory of all equipment, furniture, and non-expendable personal property purchased with Recovery Funds.
- 5.3 Internal Controls. The City will evaluate the Agency to determine if there is a risk that the Agency will not comply with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate Subrecipient monitoring including the factors listed in 2 C.F.R. § 200.331(b)(1-4). The Agency will operate according to a written set of policies and procedures that define staff qualifications and duties, lines of authority, separation of functions, and access to assets and sensitive documents. Included in these policies and procedures will be written accounting procedures for approving and recording transactions and the

control of cash receipts, disbursements, and cash balances. The Agency's financial policies and lines of authority shall be reviewed during monitoring visits defined in this Agreement.

5.4 Monitoring. The City shall monitor the use of the Recovery Funds, including reviewing financial and programmatic reports provided by the Agency. The City shall follow-up and ensure that the Agency takes timely and appropriate action on all deficiencies pertaining to the Federal award detected through audits, on-site reviews, and other means. The City shall issue a management decision for audit findings pertaining to the Recovery Funds provided to the Agency from the City as required by 2 C.F.R. § 200.521, "Management decision." The Agency agrees to cooperate and provide all information necessary for the City to monitor the Agency periodically to ensure compliance with this Agreement, compliance with federal regulations and laws, fiscal responsibility, adequate performance, and any other item of concern relating to the use of Recovery Funds and the provisions defined in this Agreement, including by permitting the pass-through entity and auditors to have access to the Subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of 2 C.F.R. § 200.300, "Statutory and national policy requirements," 2 C.F.R. § 200.309, "Modifications to period of performance," 2 C.F.R. § 200.331, "Subrecipient and contractor determinations," and Subpart F, "Audit Requirements." The monitoring will take the form of at least one site visit of the Agency's place of business and/or construction site and other various requests for information. During the term of this Agreement, the Agency shall be monitored periodically by the City, both programmatically and financially, to ensure that the program's goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria, are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance, and administrative issues relative to each program, and will identify areas where technical assistance and other support may be needed. All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the Agency and the City.

5.5 Documentation and Record-Keeping. The Agency shall maintain all records required by federal and state law that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- 5.5.1 Records providing a full description of each activity undertaken;
- 5.5.2 Records demonstrating that each activity undertaken meets one of the Expenditure Categories identified in the U.S. Department of Treasury Compliance and Reporting Guidance, Appendix 1: Expenditure Categories;
- 5.5.3 Records required to determine the eligibility of activities;

- 5.5.4 Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with Recovery Funds;
- 5.5.5 Financial records as required by 2 CFR Part 200 Performance and Financial Monitoring and Reporting, Sections 200.328, 329, and 331; and
- 5.5.6 Other records necessary to document compliance with 2 CFR Part 200 Performance and Financial Monitoring and Reporting, Sections 200.328, 329, and 331.
- 5.6 Records Retention. The Agency will retain all records pursuant to the City's record retention policy and Federal requirements, whichever period is longer. Records must be retained longer if any litigation, claim, or audit is started before the expiration of the record retention period. Other extensions to the record retention period may apply as specified in 2 C.F.R. § 200.333.
- 5.7 Client Data. The Agency shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, ethnicity, special needs, family size, elderly status, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
- 5.8 Disclosure. The Agency understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or the Agency's responsibilities with respect to services provided under this Agreement, is prohibited by Arizona State law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent or guardian.
- 5.9 Audits and Inspections. All of the Agency's records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees, or the Federal Government (including but not limited to Treasury, the Comptroller General of the United States, or any of their duly authorized representatives), unless otherwise protected by law, at any time during normal business hours, as often as the City or grantor agency deems necessary until all required records are turned over to the City of Flagstaff to audit, examine, and make excerpts or transcripts of all relevant data, provided. Any deficiencies noted in audit reports must be fully cleared by the Agency within thirty (30) days after receipt by the Agency. Failure of the Agency to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Agency agrees to have an annual Agency financial audit conducted in accordance with current City policy and, as applicable, subject to the Single Audit act of 1984 and all relevant OMB guidance, including, 2 C.F.R. § 200, Subpart F, "Audit requirements." The Agency will conduct an annual audit conducted in accordance with 2 CFR 200, Subpart F, "Audit requirements," if the Agency expends more than seven-hundred fifty thousand dollars (\$750,000) from Federal awards, in compliance with the Federal Single Audit Act (31 U.S.C. par. 7501-7507), as amended by the

Single Audit Act Amendments of 1996 (P.L. 104 to 156).

- 5.10 Monthly Reports to City. During the entire Agreement period, the Agency shall prepare and submit to the City by the second (2nd) Friday of each month a Monthly Performance Report, attached as **Exhibit F** and incorporated by reference in this Agreement. If the scope of the Project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the month in which the Project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the Project as deemed necessary by the City. Notwithstanding anything to the contrary, the Agency shall not be required to provide any of the Agency's confidential or proprietary information in reports provided to the City, including without limitation, any information regarding research collaborators, research plans, or any data, results, or other information resulting from the Agency's performance of research or any other activities relating thereto. The Agency agrees to submit other reports and records as may be required by the City from time to time, which are related to the implementation of the Project, adherence to the Agreement, and adherence to federal, state, and local laws and regulations.
- 5.11 Close-Out Report. The Agency is responsible for the close out of the Recovery Funds. The Agency's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. The City will send the Agency written notification that a Close-Out Report is due when one of the following contractual obligations have been met, and the Agency shall submit the Close-Out Report attached in that letter within sixty (60) days of receiving this notification:
- 5.11.1 The Recovery Funds have been expended and the Scope of Work has been completed;
  - 5.11.2 The Agreement period has expired; or
  - 5.11.3 The Scope of Work has been completed.
- 5.12 Subrecipient Obligations. The Agency shall perform all obligations required of subrecipients under the rules governing Recovery Funds.

## 6. ACKNOWLEDGEMENT

The Agency shall acknowledge during the term of the Agreement the contribution of the City of Flagstaff Recovery Funds toward the Project in all instances where the Project is advertised. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as receiving Recovery Funds. In addition, the Agency will include a reference to the support



provided herein in all publications made possible with Recovery Funds made available under this Agreement.

## 7. PROJECT IMPLEMENTATION

The Agency shall have responsibility for day-to-day management and implementation of the Project.

## 8. UNFORESEEN DELAY IN PERFORMANCE

Neither the Agency nor the City shall be considered in breach or default of its obligations to make satisfactory progress toward the completion of the Project in the event of unforeseen delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence. The time for performance of the obligations and length of period of restriction on use shall be extended for the period of the unforeseen delay, as determined by the City, if the party seeking the extension shall request it in writing of the other party within ten (10) days after the beginning of the unforeseen delay.

## 9. INSURANCE

The Agency and its sub-agencies shall procure and maintain insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Agency, its agents, representatives, employees, or sub-agencies, until all of their obligations have been discharged, including satisfaction of any warranty periods under this Agreement.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Agency from liabilities that might arise out of the performance of the work under this Agreement by the Agency, its agents, representatives, employees, or sub-agencies, and the Agency is free to purchase additional insurance as may be determined necessary.

9.1 Minimum Scope and Limits of Insurance. The Agency shall provide coverage at least as broad and with limits of liability not less than those stated below.

### 9.1.1 Commercial General Liability - Occurrence Form

General Aggregate .....	\$ 2,000,000
Products-Completed Operations Aggregate .....	\$ 1,000,000
Each Occurrence .....	\$ 1,000,000

9.1.2 Umbrella Coverage.....\$ 2,000,000

### 9.1.3 Automobile Liability - Any Auto or Owned, Hired, and Non-Owned Vehicles

Combined Single Limit Per Accident or Bodily Injury and Property Damage.....	\$ 1,000,000
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9.1.4 Workers' Compensation and Employer's Liability

Workers' Compensation.....	Statutory
Employer's Liability: Each Accident .....	\$ 500,000
Disease-Each Employee.....	\$ 500,000
Disease-Policy Limit.....	\$ 500,000

9.2 Self-Insured Retentions/Deductibles. Any self-insured retentions and deductibles shall be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers. The Agency shall be solely responsible for any self-insured retention amounts. City at its option may require the Agency to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

9.3 Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

9.3.1 Commercial General Liability and Automobile Liability Coverages

9.3.1.1 The City of Flagstaff, its officers, officials, agents, employees, and volunteers are to be listed as additional insureds with respect to liability arising out of: activities performed by, or on behalf of, the Agency, including the City's general supervision of the Agency; products and completed operations of the Agency; and automobiles owned, leased, hired, or borrowed by the Agency.

9.3.1.2 The Agency's insurance shall contain broad form contractual liability coverage.

9.3.1.3 The Agency's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, or volunteers shall be in excess to the coverage of the Agency's insurance and shall not contribute to it.

9.3.1.4 The Agency's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9.3.1.5 Coverage provided by the Agency shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

9.3.1.6 The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from work performed by the Agency for the City.

- 9.3.2 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from work performed by the Agency for the City.
- 9.3.3 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to: Risk Manager, 211 W. Aspen Avenue, Flagstaff, AZ, 86001, and shall be sent by certified mail, return receipt requested.
- 9.3.4 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Agency from potential insurer insolvency.
- 9.3.5 Verification of Coverage. The Agency shall furnish the City with Certificates of Insurance as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance. The Project name/description and City contract number shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Agency commences work.
- 9.3.5.1 Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall be a material breach of Agreement.
- 9.3.5.2 All Certificates of Insurance required by this Agreement shall be sent directly to: Stacey Brechler-Knaggs, Grants Administrator, 211 West Aspen Avenue, Flagstaff, Arizona, 86001. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement, at any time.
- 9.3.6 Sub-agencies. The Agency's Certificates of Insurance shall include all sub-agencies as insureds under its policies, or the Agency shall furnish to the City separate Certificates of Insurance for each sub-agency. All coverages for sub-agencies shall be subject to the minimum requirements identified above.

9.3.7 Approval. Any modification or variation from the insurance requirements in this Agreement shall have prior approval from the Flagstaff City Attorney's Office and the Risk Manager, whose decision shall be final. Such action shall not require a formal Agreement Amendment but may be made by administrative action.

## **10. INDEBTEDNESS TO INTERNAL REVENUE SERVICE OR OTHER PUBLIC ENTITY**

10.1 Delinquent Taxes. Any judgment, lien, levy, or outstanding amount owed to the Internal Revenue Service, State, County, City, or other public entity by the Agency may constitute an event of default or breach of this Agreement, unless previously approved by the City in writing, and may constitute sufficient reason for cancellation of this Agreement by the City according to the procedures contained in this Agreement.

10.2 Disclosure of Delinquent Taxes. Before entering into this Agreement, and during the time-period covered by this Agreement, the Agency shall disclose any information related to this Section. This shall also include the immediate reporting of breaches in payback arrangements or breaches in other Agreements related to the above. Failure to comply with any disclosure provision in this Section may also constitute sufficient reason for cancellation of this Agreement by the City according to the procedures contained in this Agreement.

## **11. DEFAULT/REMEDIES**

In the event of any default in or breach of this Agreement or any of its terms or conditions by either party, such party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach. In any event, such breach or default shall be remedied within thirty (30) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach not cured or remedied within thirty (30) days, the aggrieved party may terminate this Agreement or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. Notwithstanding the foregoing, in the event of a breach of any term of this Agreement by the Agency, the City, at its sole election and in addition to any other remedy, may immediately withhold payment of funds until such default is cured and may initiate suspension or termination as set forth below.

## **12. INDEPENDENT AGENCY STATUS**

The Agency is an independent entity in the performance of all activities and functions pursuant to this Agreement. The Agency and City are not and shall not be considered as joint ventures, partners, or agents of each other and neither shall have the power to bind or obligate the other. The Agency's officers, employees, agents, and subcontractors shall not be considered as officers, employees, agents, or subcontractors of the City. The Agency hereby agrees not to represent to anyone that the Agency is an agent of the City or has any authority to act on behalf of the City.

The Agency shall be responsible for all employment compensation claims for Workers' Compensation benefits, or other claims by employees arising as a result of activities funded in whole or in part from the proceeds of this Agreement, and the Agency shall hold the City harmless for any and all such claims.

### **13. INDEMNIFICATION AND HOLD HARMLESS PROVISIONS**

To the fullest extent permitted by law, the Agency shall defend, indemnify, and hold harmless the City, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, or services of the Agency, its employees, agents, or any tier of subcontractors in the performance of this Agreement. The Agency's duty to defend, hold harmless, and indemnify the City, its agents, representatives, officers, directors, officials, and employees shall arise in connection with the claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work, or services in the performance of this Agreement including any employee of the Agency or any tier of subcontractors or any other person for whose acts, errors, mistakes, omissions, work, or services the Agency may be legally liable.

### **14. NONDISCRIMINATION AND AFFIRMATIVE ACTION REGARDING EMPLOYMENT**

- 14.1 Nondiscrimination. The Agency shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, and/or familial status, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In addition, if the Agency operates within City of Flagstaff limits, the Agency shall comply with the City Code, Chapter 14-02, "Civil Rights," which also prohibits discrimination based on sexual orientation, or gender identity or expression.
- 14.2 Incorporation of Nondiscrimination Clause into the Agency Activities. The Agency further agrees that the Section 14.1 clause will be incorporated in all supplier contracts or other agreements entered into in connection with this Agreement.
- 14.3 Certifications from Subcontractors and Suppliers. The Agency assures that its authorized agent will obtain all supplier and subcontractor certifications contained in the Agreement documents and that those suppliers and contractors will adhere to all affirmative action requirements.

### **15. COMPLIANCE WITH ALL LAWS**

- 15.1 Federal, State, and Local Laws. The Agency shall give all notices and comply with all laws, ordinances, rules, building codes, regulations, and lawful orders of any public authority bearing on the performance of activities pursuant to this Agreement. If the

Agency observes that any of the Agreement documents are in conflict with any laws, statutes, building codes, or regulations, it shall promptly notify the City, in writing, and the parties shall execute any appropriate written modification.

- 15.2 Liability. Should the Agency perform any work knowing it to be contrary to applicable laws, ordinances, rules, building codes, or regulations, and not give proper notice to the City, it shall assume full responsibility therefore and shall bear all cost incurred due to its negligence.
- 15.3 Agency Adherence to Federal Regulations and Laws. The Agency agrees to comply with the following laws related to the receipt of Recovery Funds:
- 15.3.1 The Agency shall comply with the Grant Provisions for the U.S Department of Treasury, American Rescue Plan Act, Coronavirus State and Local Fiscal Recovery Funds, attached as **Exhibit G**.
- 15.3.2 The Agency shall carry out its responsibilities in compliance with the requirements of Executive Order 11063, as amended by Executive Order 12259; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the prohibitions against age discrimination under the Age Discrimination Act of 1975 (42 U.S.C. § 6101-07); and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (19 U.S.C. § 794).
- 15.3.3 The Agency shall comply, as applicable, with the requirements of the Davis-Bacon Act (40 U.S.C. § 276a-276a-5), as supplemented by Department of Labor regulations (29 C.F.R. Part 5); and comply with Sections 103 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. § 327-330), as supplemented by Department of Labor regulations (29 C.F.R. Part 5).
- 15.3.4 The Agency shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations. (41 C.F.R. chapter 60).
- 15.3.5 The Agency agrees to comply with the Copeland "Anti-Kick Back" Act (18 U.S.C. § 874), as supplemented in Department of Labor regulations (29 C.F.R. part 3).
- 15.3.6 The Agency agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368m Executive Order 11738), and Environmental Protection Contract regulations (40 C.F.R. part 15).
- 15.3.7 The Agency agrees to comply with all applicable standards, orders, or regulations issued under Byrd Anti-Lobbying Amendment (31 U.S.C. §

1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification.

15.3.8 The Agency agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

15.3.9 The Agency agrees to comply, as applicable, with 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principle, and Audit Requirement for Federal Awards.

15.4 Suspension or Debarment. Submittal of an offer or execution of a contract shall attest that the Subrecipient or contractor is not currently suspended or debarred to contract in local, state, or federal jurisdictions. If the Subrecipient or any of its contractors become suspended or debarred, the Subrecipient shall immediately notify the City. The City may, by written notice to the Subrecipient, immediately terminate this Agreement if the City determines that the Subrecipient or their contractors have been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

15.5 Contracts and Subawards to Debarred and Suspended Parties. Pursuant to 2 C.F.R. subpart C § 200.213, grantees and subrecipients must not make an award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." By entering into this Agreement, Subrecipient agrees to comply with all relevant codes including 2 C.F.R. subpart C, "Responsibilities of Participants Regarding Transactions." The Agency must verify that any sub-agencies are not excluded or disqualified.

The Agency does this by:

(a) Checking the SAM Exclusions: System for Award Management (SAM) – [www.sam.gov](http://www.sam.gov).

(b) Collecting a certification from that person.

(c) Adding a clause or condition to the covered transaction with that person.

## 16. DISPUTES

The laws of the State of Arizona, without regard to any otherwise applicable choice or conflict of law provisions, will govern this Agreement.

## **17. AVAILABILITY OF FUNDS**

It is expressly understood by the parties hereto that this Agreement has been negotiated and executed in anticipation of receipt of funds by the City from the federal government, and that the terms, conditions, and sums payable under this Agreement are subject to any changes or limitations which may be required by the terms of the City's agreement with the federal government.

## **18. CONSULTATION**

The Agency and the City hereby agree to consult one another on a timely basis regarding the applicability of this Agreement to any condition which may impact the execution of this Agreement and which may arise during the Agreement period.

## **19. CONTINUING LIABILITY**

The Agency shall have continuing liability after the term of this Agreement for any breach of this Agreement, including failure to perform in accordance with required Federal law, rules, and regulations until after all complaints, investigations, and sanctions, including those arising out of audits performed by Treasury, the City, or other authorized agencies are resolved. The Agency shall be liable for any sanctions or requirements imposed at any time upon the City arising out of the Agency's activities performed pursuant to this Agreement.

## **20. TERMINATION**

- 20.1 Transactional Conflicts of Interest. The parties acknowledge that this Agreement is subject to cancellation by the City of Flagstaff under the provisions of A.R.S. § 38-511.
- 20.2 Termination. In accordance with 2 C.F.R. part 200, subpart D, the City may suspend or terminate this Agreement if the Agency materially fails to comply with any term or condition of this Agreement, or if the Agency fails to maintain a good faith effort to carry out the purpose of this Agreement. If the Agency fails to materially comply with any term of the award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, City may take one or more of the following actions, as appropriate in the circumstances:
- 20.2.1 Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency;
  - 20.2.2 Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
  - 20.2.3 Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;
  - 20.2.4 Withhold further awards for the program; or



20.2.5 Take other remedies that may be legally available.

20.3 Termination for Convenience. The City or the Agency may terminate this Agreement for convenience in accordance with 2 C.F.R. part 200 and the Procurement Code if both parties agree upon the termination and termination conditions. The party initiating the termination shall notify the other party in writing stating the reasons for such termination. The Agency may unilaterally terminate this Agreement upon written notification to the City setting forth the reasons for such termination, the effective date, and in the case of partial termination the portion to be terminated. However, if, in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the City may terminate the award in its entirety.

## 21. NOTICE

Notice shall be provided as follows:

### **City of Flagstaff**

Stacey Brechler-Knaggs  
Grants Administrator  
211 W. Aspen Ave.  
Flagstaff, AZ 86001  
(928) 213-2227

### **Agency**

Agency Contact and Title  
Mailing Address  
Phone number

Copy to:

Kristine Pavlik  
Housing and Grants Administrator  
2323 N. Walgreens St. Suite 2  
Flagstaff, AZ 86004  
(928) 213-2749

Sarah Darr  
Housing Director  
3481 N. Fanning Dr.  
Flagstaff, AZ  
(928) 213-2745

Such written notices, demands, and communications may be sent to such other addresses as either party may from time to time designate by mail as provided in this Section.

**22. LIST OF EXHIBITS**

- Exhibit A: Special Conditions of the Agreement
- Exhibit B: Request for Payment and Disbursement Form
- Exhibit C: Budget
- Exhibit D: Agency Authorization to Execute Agreement
- Exhibit E: Schedule of Completion
- Exhibit F: Monthly Performance Report
- Exhibit G: Grant Provisions

IN WITNESS WHEREOF, the parties acknowledge that they have read, understand, approve, and accept all of the provisions of this Agreement and the attached Exhibits.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**City of Flagstaff**

**Agency**

\_\_\_\_\_  
Greg Clifton, City Manager

\_\_\_\_\_  
Agency Authorized Signer and Title

Attest:

Attest:

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

\_\_\_\_\_  
Corporate Secretary

Approved as to form:

\_\_\_\_\_  
City Attorney