

FISCAL YEAR 2020-21
AGREEMENT BETWEEN THE CITY OF AUSTIN
AND
THE HOUSING AUTHORITY OF THE CITY OF AUSTIN
FOR SERVICES PROVIDED UNDER
RELIEF OF EMERGENCY NEEDS FOR TENANTS (RENT) 3.0 PROGRAM
CDBG-CV CFDA #14.28
Federal Award Identification Number: B-20-MW-48-0500
Federal Award Date: January 21, 2021
DUNS # 095111829

This Agreement (“**Agreement**”) is made by and between the **City of Austin** (the “**City**”), a Texas municipal corporation having its principal offices at 301 West 2nd Street, Austin, Travis County, Texas 78701 and **The Housing Authority of the City of Austin** (“**Subrecipient**”), having offices at 1124 S IH 35 Frontage Road, Austin, Texas 78704 (individually, the “**Party**” or collectively, the “**Parties**”).

RECITALS

WHEREAS, on March 6, 2020, a Declaration of Local Disaster was issued by Mayor Adler to allow the City to take measures to avoid the spread of the novel coronavirus (COVID-19) across the City and Travis County; and

WHEREAS, on March 13, 2020, Governor Abbot issued a Declaration of State of Disaster that allowed for additional steps to prepare for, respond to, and mitigate the spread of COVID-19; and

WHEREAS, the rate of COVID-19 infections continues to surge in the Austin area, and has caused increased local economic stress; and

WHEREAS, the COVID-19 pandemic has greatly impacted the ability of low-income households to pay their rent; and

WHEREAS, the City has been awarded federal funding to alleviate the impacts of the COVID-19 pandemic, and desires to provide rental assistance to low-income households negatively affected by the COVID-19 pandemic (the “**Program**”); and

WHEREAS, in order to provide emergency rental assistance urgently needed to households impacted by the COVID-19 pandemic, the City desires to contract for the services described herein and to assist Subrecipient with the funding for said services and the associated program;

WHEREAS, Subrecipient has agreed to perform its obligations under this Agreement for the benefit of the City; and

WHEREAS, this Interlocal Agreement is entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code; and

WHEREAS, the City is a local government entity as defined by Texas Government Code Section 791.003, and the Housing Authority of the City of Austin is a government authorized Housing Finance Corporation pursuant to Texas Local Government Code Chapter 394.

NOW THEREFORE, the Parties hereto, for and in consideration of these promises and mutual obligations herein undertaken, do hereby agree as follows:

SECTION 1 - PURPOSE OF AGREEMENT

The City agrees to contract with Subrecipient and Subrecipient agrees to provide, oversee, administer, and carry out the activities and work described in this Agreement. Subrecipient agrees that with respect to any amounts funded under this Agreement the activities and work described in the Statement of Work ("SOW"), as set forth in Exhibit A of this Agreement. Exhibit A sets forth the activities and work to be performed by Subrecipient under this Agreement.

1.1 Levels of Accomplishment - Goals and Performance Measures.

The Subrecipient agrees to meet or exceed the following milestones for the not to exceed amount specified in Section 5 (Liability of Payment):

Distribute up to \$25,030,970.00 in rental assistance to serve an estimated 22,000 rent payments throughout the duration of the Program.

Of Program participants, aim to have at least 2/3 of Program participants be at 30% MFI and below.

Expand targeted outreach with increased advertising (print, social media, radio and television)

SECTION 2 - TERM AND TERMINATION

2.1 **Term.** This Agreement shall commence on March 15, 2021 and terminate on December 31, 2021.

2.2 **Holdover.** Upon expiration of the initial term or an agreed period of extension, Subrecipient agrees to cooperate with the City to work towards additional terms for monthly indirect costs for a holdover period under the additional terms and conditions of this Agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the Program (not to exceed 120 calendar days unless mutually agreed on in writing). For the sake of clarity, any such holdover,

including an extension of the RENT 3.0 program time or scope, will include additional administrative fee or indirect costs to Subrecipient, regardless of the status of previously agreed upon payments under this Agreement.

- 2.3 **Right to Assurance.** Whenever one Party to the Agreement in good faith has reason to question the other Party's intent to perform, demand may be made to the other Party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding Party may treat this failure as an anticipatory repudiation of the Agreement.
- 2.4 **Default.** Subrecipient shall be in default under the Agreement if Subrecipient (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under Section 2.3 above, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in any report or deliverable required to be submitted by Subrecipient to the City. Subrecipient's failure to perform a material obligation due to City's unexcused failure to deliver payment, as described in Section 6.1, shall not be considered a basis for default.
- 2.5 **Termination For Cause.** In the event of a default by Subrecipient, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless Subrecipient, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.
- 2.6 **Termination Without Cause.** The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, Subrecipient shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay Subrecipient, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 2.7 **Fraud.** Fraudulent statements by Subrecipient in any report or deliverable required to be submitted by Subrecipient to the City shall be grounds for the termination of the Agreement for cause by the City and may result in legal action. Notwithstanding anything in this Section to the contrary, in the event the City has reason to believe that criminal fraud or such other criminal activity is occurring or has occurred in connection with this Agreement, Subrecipient shall make available to the City or applicable funding agency, at a time designed by the City, its records, books, documents and other evidence pertinent to the costs, expenses and activities of this Agreement.

SECTION 3 - LEGAL AUTHORITY

- 3.1 Subrecipient's Representations & Warranties: Subrecipient represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.
- 3.2 Subrecipient's Representative's Representations & Warranties: The person(s) executing this Agreement on behalf of Subrecipient represents and warrants that they have been fully authorized by Subrecipient to execute this Agreement on its behalf and to legally bind Subrecipient to all the terms, performances and provisions of this Agreement.
- 3.3 Suspension or Termination of Agreement: The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Subrecipient or of the person signing this Agreement to enter into this Agreement. Subrecipient is liable to the City for any money it has received from the City for performance of the provisions of this Agreement, if the City has suspended or terminated this Agreement for the reasons enumerated in this Section 3.

SECTION 4 - PERFORMANCE AND COMPLIANCE WITH ALL LAWS

- 4.1 Report Requirement: Subrecipient agrees to perform the Program and to produce reports as required in Section 12.2 of this Agreement until completion of the Program in accordance with the terms and conditions of this Agreement.
- 4.2 Supremacy of Agreement: In the event any conflict should arise between the terms of Subrecipient's proposal for the Program as filed with the City and this Agreement, the Agreement shall prevail.
- 4.3 Material Compliance: It is expressly understood that Subrecipient's performance shall be in material compliance with all federal, state, and local laws, regulations and authorities and that any changes in applicable laws, regulations, or authorities are automatically incorporated herein without specific reference. Without limiting the foregoing and to the extent applicable, Subrecipient agrees to use the funds provided hereunder in strict compliance with the Program requirements which in no way is meant to constitute a complete compilation of all duties imposed upon Subrecipient by law or administrative ruling or to narrow the standards which Subrecipient must follow. Subrecipient shall promptly refund any funds not expended in accordance with this Agreement.
- 4.4 Texas Government Code §2271.002: Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Agreement.

- A. For the purposes of this Section only, the terms “company” and “boycott Israel” have the meaning assigned by Texas Government Code §2271.001.
- B. If the Subrecipient qualifies as a “company”, then the Subrecipient verifies that it:
 - i. does not “boycott Israel”; and
 - ii. will not “boycott Israel” during the term of this Agreement.
- C. The Subrecipient’s obligations under this section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Agreement.

SECTION 5 **LIABILITY FOR PAYMENT**

- 5.1 Total Liability: Notwithstanding any other provision of this Agreement, the City's total liability for payment of funds to Subrecipient under this Agreement shall not exceed \$25,030,970.00 for direct services (rental assistance) plus \$4,436,818.00 for operations related expenditures (the fixed fee), for a grand total of \$29,467,788.00 of CDBG-CV, Corona Virus Relief, U.S. Treasury Department’s Emergency Rental Assistance Program (ERAP), and General Funds.
- 5.2 Requirement for Written Request by City: It is expressly understood that the City is under no obligation to pay any charges to Subrecipient, which do not result directly from the performance of the Program and are not undertaken at the City’s written request.
- 5.3 Acceptance of, and Payment for, Work: The City's liability for payment is based solely upon acceptance of Subrecipient’s work as satisfactory and complete, as defined by the City, which acceptance will not be unreasonably withheld.
- 5.4 Costs: Any indirect costs will be included in the fixed fee and must be consistent with the conditions of this Agreement. In addition, the City may require a more detailed budget breakdown than the one contained in Attachment 1, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City upon reasonable notice to Subrecipient. Any amendments to the budget must be approved in writing by both the City and the Subrecipient.
 - 5.4.1 Method of Compensation.
Rental assistance funding to Subrecipient will be dispersed to Subrecipient after receipt of invoice(s), wired to bank account designated by Subrecipient, after review and verification of clients served. Total

compensation for direct services (rental assistance) is not to exceed \$25,030,970.00.

With the submission of original monthly invoices together with monthly reports (Performance Report, Demographic Report, and Project Report) as required per Section 6 of the Statement of Work (Exhibit A), for the indirect services described in this Agreement, the Subrecipient will be paid on a monthly basis for operations funding (not to exceed a total of 4,436,818.00, invoiced at the monthly agreed upon fixed fee of \$414,781.80, with the additional \$150,000 mobilization fee, plus \$139,000 marketing fee to be invoiced in March 2021, according to the schedule in Attachment 1.

5.4.2 If subrecipient distributes all funds available for direct services before December 2021, the balance of Indirect Services fee will be due in full within 30 days from the time the funds for direct services are fully distributed, minus a retainage fee of \$100,000.00, to be paid upon submission of final close-out report.

5.5 Initial Reports: In the event initial reports as required to be submitted by Subrecipient pursuant to the SOW and budget are deemed by the City to be incomplete or unsatisfactory, Subrecipient agrees to make such revisions or changes as may be required by the City upon receipt of documentation explaining the nature of any deficiencies at no additional cost to the City.

SECTION 6 MEASURE OF LIABILITY AND PAYMENTS

6.1 Payment to Subrecipient: In consideration of full and satisfactory performance of services hereunder by Subrecipient, the City shall make payments to Subrecipient in accordance with the method of payment described in Section 8 based on the budget set forth in Exhibit A, subject to the limitations and provisions set forth in this Agreement.

6.2 Withholding: The City may withhold or set off the entire payment or part of any payment otherwise due Subrecipient to such extent as may be necessary due to:

6.2.1 delivery of defective or non-conforming deliverables by Subrecipient;

6.2.2 third party claims, which are not covered by the insurance which Subrecipient is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

6.2.3 failure of Subrecipient to pay subcontractors ("Subcontractors"), or for labor, materials or equipment;

6.2.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by Subrecipient;

6.2.5 reasonable evidence that Subrecipient's obligations will not be completed within the time specified in the Agreement, and that the unpaid balance

- would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 6.2.6 failure of Subrecipient to submit proper invoices with all required attachments and supporting documentation;
 - 6.2.7 failure of Subrecipient to comply with any material provision of the Agreement, its exhibits, and documents incorporated by reference into this Agreement, subject to any rights of cure available to Subrecipient under the terms of this Agreement; or.
 - 6.2.8 identification of previously reimbursed expenses determined to be unallowable after payment was made
 - 6.2.9 Subrecipient will submit reports, deliverables, and an invoice for payment to City in accordance with the terms and conditions of this Agreement and its exhibits.
- 6.3 Article VII, Section 1 Notice: Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to City for taxes, and of §2-8-3 of the Austin City Code of 1992, as amended, concerning the right of the City to offset indebtedness owed City.
- 6.4 Absence or Failure of Appropriated Funds: The City's payment obligations are payable only and solely from funds appropriated and available for the purpose of this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to Subrecipient. The City shall provide the Subrecipient written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
- 6.5 Obligations Contingent Upon Adequate Funding: It is expressly understood and agreed by the Parties hereto that the City's obligations under this Section 6 are contingent upon the actual receipt of adequate funds to meet the City's liabilities under this Agreement. If adequate funds are not available to make payments under this Agreement, the City shall notify Subrecipient in writing within a reasonable time, not to exceed thirty (30) calendar days, after such fact has been determined. The City may, at its option, either reduce the amount of its liability, as specified in Section 5.1, or terminate this Agreement. If funds eligible for use for purposes of this Agreement are not granted to the City or are reduced, the City shall not be liable for further payments due to Subrecipient under this Agreement. It is also understood by the Parties hereto that Subrecipient's obligations to distribute funds is contingent upon the delivery of such funds from City.

- 6.6 Excluded Costs: The City is not liable for the payment of any cost or portion thereof with respect to the Program which:
- 6.6.1 has been paid, reimbursed or is subject to payment or reimbursement, from any other source other than Subrecipient's own funds;
 - 6.6.2 was incurred prior to the beginning date, with the exception of City-authorized Program mobilization work and related activities to be included in fees to be invoiced in August and credited in the last invoice for indirect services, or after the ending date specified in Section 2.1, unless specifically authorized in writing by the City;
 - 6.6.3 is not incurred in strict accordance with the terms of this Agreement including all exhibits attached hereto;
 - 6.6.4 has not been billed to the City on or before the earlier of (a) sixty (60) calendar days following billing to Subrecipient by its subcontractors or other third parties, or (b) termination of this Agreement; or
 - 6.6.5 is not an eligible cost identified by local or federal regulations.
- 6.7 Approval of Further Action By City: The City is not liable for any cost or portion thereof which is incurred with respect to any activity of Subrecipient after the City has requested that Subrecipient furnish data concerning such action prior to proceeding further, unless and until Subrecipient is thereafter advised by the City to proceed.
- 6.8 Liability to Subrecipient Only: The City shall not be obligated or liable under this Agreement to any party other than Subrecipient for payment of any monies or for provision of any goods or services.
- 6.9 Invoices: Upon the City's approval of Program reports and deliverables, Subrecipient will submit an invoice for payment to the City in accordance with the terms and conditions of this Agreement and its exhibits.
- 6.10 Timing of Payments: The City shall make payment to Subrecipient within a reasonable time, not to exceed seven (7) days for direct costs and ten (10) days for indirect costs, following receipt of draw requests and invoices, provided it is complete and accompanied by documentation as required in Section 8.4 of this Agreement. If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

6.11 Waiver of Claims: The making and acceptance of final payment will constitute:

6.11.1 a waiver of all claims by the City against Subrecipient, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of Subrecipient to comply with the Agreement or the terms of any warranty specified herein, (4) arising from Subrecipient's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

6.11.2 a waiver of all claims by Subrecipient against the City, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from failure of City to comply with the Agreement or the terms of any warranty specified herein, or (3) arising from City's continuing obligations under the Agreement.

SECTION 7 ALLOWABLE COSTS

7.1 Costs will be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Agreement and in conformance with the standards and provisions of the SOW and budget.

7.1.1 To be allowable under this Agreement, a cost must meet all of the following general criteria:

- As deemed reasonable per acceptance of the fixed fee for the performance of the activity under the Agreement;
- Conform to any limitations or exclusions set forth in this Agreement;
- Be consistent with policies and procedures that apply uniformly to both government-financed and other activities of the organization;
- Be determined and accounted in accordance with generally accepted accounting principles (GAAP); and
- Be adequately documented

7.2 Approval of Subrecipient's budget does not constitute prior written approval even though certain items may appear therein. The City's prior written authorization is required for the following to be considered allowable costs:

7.2.1 Any subcontract in an amount greater than \$1,000, with a firm other than subcontractors CVR and Berman Hopkins.

SECTION 8 - PAYMENTS TO SUBRECIPIENT

8.1 Deposit of Funds: Funding for direct services (not to exceed \$25,030,970.00) will be wired to bank account designated by Subrecipient prior to Subrecipient disbursement of emergency rental assistance. Subrecipient shall deposit and

maintain all funds received under this Agreement in either a separate numbered bank account or a general operating account, either of which shall be supported by the maintenance of a separate accounting with a specific chart which reflects specific revenues and expenditures for the monies received under this Agreement. The Subrecipient's accounting system must identify the specific expenditures, or portions of expenditures, against which funds under this Agreement are disbursed. Subrecipient must be able to produce an accounting system-generated report of exact expenses or portions of expenses charged to the City for any given time period.

- 8.1.1 Such account shall contain only the funds received pursuant to this Agreement and that no other funds shall be mingled with funds in such account, except funds deemed to be Program income as defined. Subrecipient shall support all checks and withdrawals from said account with itemized documentation of costs under this Agreement.
- 8.2 Lien Rights: The City shall have the authority to place a lien upon any balance in said account paramount to all other liens, which lien shall secure the repayment of any advance payment made hereunder. Subrecipient agrees to execute any and all security agreements and other documents that the City determines necessary to evidence said lien.
- 8.3 FDIC Requirement: Said account shall be maintained, under conditions approved by the City, in a financial institution, with federal deposit insurance coverage and the balance, if any, exceeding the federal deposit insurance coverage shall be collaterally secured.
- 8.4 Method of Payment - Indirect Expenses
 - 8.4.1 Timing of Invoices: Each month Subrecipient shall submit an indirect cost invoice to the City. The invoice shall be hand delivered, emailed or mailed to the City and received no later than the tenth(10th) calendar day of the month, for services provided in the prior month. Subrecipient shall include with the invoice:
 - 8.4.1.1 cash disbursements and receipts journal;
 - 8.4.1.2 bank reconciliations for all bank accounts described in Section 8 of this Agreement;
 - 8.4.1.3 invoices that support all Program expenditures, as well as employee time sheets and payroll registers as described in attached exhibits; and
 - 8.4.1.4 Program income required to be reported monthly to the City.
 - 8.4.2 Attachments: Subrecipient shall submit as part of the invoice and attachments, in such form as required by the City, a summary of services provided during the term represented by the invoice or such other

affidavits or reports as may be reasonably required by the City to document the City liabilities under this Agreement.

- 8.4.3 Payment On Receipt: Upon receipt of and approval by the City of each accurate and complete invoice and attachments, the City shall pay Subrecipient per Section 6.10 and Exhibit A.

8.4 Method of Payment - Direct Expenses

- 8.4.1 Timing of Invoices: Subrecipient shall submit a Draw Request to the City on a weekly basis, as applicable per program processes and available funding permits. Subrecipient shall include with the invoice:

- 8.4.1.1 cash disbursements and receipts journal;

- 8.4.1.2 bank reconciliations for the Subrecipient-designated accounts described in Section 8 of this Agreement;

- 8.4.1.3 Program income required to be reported monthly to the City

- 8.4.2 Subrecipient shall submit as part of the Draw Request and attachments, in such form as required by the City, information regarding eligible applicants, rent amounts, landlords, etc., or reports as may be reasonably required by the City to document the City liabilities under this Agreement.

- 8.4.3 Payment On Receipt: Upon receipt of and approval by the City of each accurate and complete invoice and attachments, the City shall pay Subrecipient per Section 6.10 an amount equal to the City liabilities which have not been previously billed and/or previously paid by the City. However, delinquent billing to the City by Subrecipient shall justify delay of payment by the City.

- 8.4.4 Subrecipient's financial management system shall provide for an adequate procedure to minimize the time elapsed between the City's payment to Subrecipient and Subrecipient's disbursement of funds.

- 8.5 Excess Payment. Subrecipient shall refund to the City within thirty (30) calendar days of the City's written request, any sum of money which has been paid by the City and which the City at any time thereafter determines:

- 8.5.1 has resulted in overpayment to Subrecipient; or

- 8.5.2 has not been spent strictly in accordance with the terms of this Agreement;
or

- 8.5.3 is not supported by adequate documentation to fully justify the expenditure, subject to Subrecipient's reasonable opportunity to cure any notification of inadequate documentation by City.

8.5.4. Payments made to non-US citizens under the approved program guidelines of RENT 2.0 program, that are subsequently disallowed or deemed improper by a government agency, are not Excess Payments under this Section.

8.6 Disallowed Costs.

8.6.1 Upon termination of this Agreement for any reason, should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by the City or applicable funding agency (excluding disallowances described in section 8.5.4), Subrecipient will refund such amount to the City within thirty (30) calendar days of written notice to Subrecipient specifying the amount disallowed. In the event a refund is not made by Subrecipient to the City within such period, the City shall take other action as is permitted under this Agreement.

8.6.2 Refunds of disallowed costs may not be made from any other funds received from or through the City.

8.6.3 The costs not allowable according to 2 CFR 200.403 and 404. City shall have the authority to make the final determination as to whether an expense is an allowable cost.

8.7 De-obligation of Funds. In the event that actual expenditure rates deviate from Subrecipient's provision of a corresponding level of performance, as specified in the SOW and budget, the City hereby reserves the right to reappropriate or recapture any such under-expended funds.

8.8 Agreement Closeout. The Agreement closeout package, together with final expenditure report, for the time period covered by the last invoice requesting a drawdown of funds under this Agreement, shall be submitted by Subrecipient to the City within thirty (30) calendar days following the close of the term of this Agreement, using the format as provided to Subrecipient by the City.

SECTION 9 - SUBRECIPIENT OBLIGATIONS AND RESPONSIBILITIES

9.1 Subrecipient's Representative: Subrecipient hereby accepts responsibility for the performance of all services contracted hereunder. The City will consider Subrecipient's Executive Officer to be Subrecipient's representative responsible for the management of all contractual matters pertaining hereto, unless written notification is received to the contrary, from Subrecipient.

9.2 Subrecipient acknowledges that the City is the Contract Administrator of this Agreement and responsible for the administration of this Agreement.

- 9.3 Communications Regarding Agreement: All communications between the City and Subrecipient with regard to contractual matters will be directed through the City Contract Representative and Subrecipient Contract Representative.
- 9.4 Tax Obligations: Subrecipient shall promptly and completely file all tax returns which are required and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments received by Subrecipient. Subrecipient covenants that no tax liability has been asserted against Subrecipient by the Internal Revenue Service or any other taxing authority for taxes in excess of those already paid and Subrecipient knows of no basis for any such deficiency assessment.
- 9.5 Inspection of Books and Records: The City and any authorized agent shall have the right, upon reasonable notice, at all reasonable hours and without causing any unreasonable interruption to the operations of Subrecipient and its subcontractors, to inspect, monitor, and audit all books, accounts, reports, files, records, contracts, and all other papers or property relating to the administration of the RENT 2.0 Program under this Agreement. In addition, the City may obtain such audited financial statements from Subrecipient and its subcontractors as the City may require in its sole discretion, including but not limited to an annual year-end statement and semiannual statements during the term of this Agreement. Such statements shall be provided to the City directly by the auditor. The Subrecipient shall include Section 9.5 above in all subcontractor agreements entered into in connection with this Agreement.

SECTION 11 - PROGRAM INCOME

- 11.1 Definition of Program Income: For the purposes of this Agreement, Program Income includes, but is not limited to, earnings of the Subrecipient realized from any accrued interest from the City's deposit. In this case, all interest accrued will be used toward payment of rental assistance.
- 11.2 Use of Program Income: Subrecipient must use income from interest, on deposits held within the Subrecipients designated bank account, for direct program services, direct rental payments.
- 11.2.1 Subrecipient shall report all Program Income received on a monthly basis;
- 11.2.2 Subrecipient shall show all Program Income received as part of any invoice;
- 11.2.3 All Program Income shall be spent in accordance with this Agreement, the SOW, and the budget.
- 11.3 Records: Records of the receipt and disposition of Program Income must be maintained by Subrecipient in the same manner as required for other Agreement funds and reported to the City in the format prescribed by the City.

11.4 Prior Determination by City Required: It is the Subrecipient's responsibility to obtain from the City a prior written determination as to whether or not income arising directly from this Agreement, or the performance of any obligations under this Agreement, is Program Income, which determination shall not be unreasonably delayed by the City. The City has final authority to make a determination as to whether such income is Program Income or not. The Subrecipient is responsible to the City for the repayment of any and all amounts as determined by the City to be Program Income unless otherwise approved in writing by the City.

SECTION 12 - REPORTS, MEETINGS AND INFORMATION

12.1 At such times and in such form as the City may require, and upon reasonable advance notice, Subrecipient shall furnish such statements, records, reports, data and information, as the City may request and deem pertinent to matters covered by this Agreement.

12.2 Monthly performance reports and other reports are incorporated herein for all purposes and shall be submitted to the City on a monthly basis with submitted invoices. Subrecipient agrees to gather information and data relative to all programmatic and financial reporting as of the beginning date specified in Section 2, and shall make available to the City the following original information and material for the applicable periods:

12.2.1 documents that support all procurements;

12.2.2 subcontracts entered into;

12.2.3 proof of insurance on any property acquired; and

12.2.4 any additional information or material the City may reasonably request concerning this Agreement.

12.3 The City may require Subrecipient to schedule and to participate in periodic monitoring meetings with the City.

SECTION 13 - AUDIT

In the event Subrecipient receives combined receipts of federal financial assistance and outstanding federal direct, guaranteed or insured loan balances totaling \$750,000 or more for any one-year period. Subrecipient agrees to submit to City a complete set of audited financial statements and the auditor's opinion and management letters in accordance with 24 CFR, Part 44, OMB Circular A133, the Single Audit Act of 1984, and the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions covering Subrecipient's fiscal year until the end of the term of this Agreement.

- 13.1 Subrecipient shall contract with an independent auditor utilizing a letter of engagement. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas.
- 13.2 City will provide Subrecipient with a copy of OMB Circular A-133, and Subrecipient shall make available to the auditor a copy of OMB Circular A-133 prior to the beginning of said audit. Prior to the start of the audit, a letter of engagement between Subrecipient and the auditor which details the services to be provided, including the audit requirements of this Section 12, must be signed. One copy of a complete financial audit and the auditor's opinion and management letters must be provided to City directly from the auditor within one hundred eighty (180) calendar days of the end of Subrecipient's fiscal year, unless alternative arrangements are approved in writing by City.
- 13.3 Required Annual Audit: Subrecipient must provide City with annual audits until this Agreement is terminated, unless waived by City.
- 13.4 The expiration or termination of this Agreement shall in no way relieve Subrecipient of the accomplishment of the above audit requirements in the manner set forth herein.
- 13.5 The costs of audits made in accordance with this Section 13 are allowable charges. These charges can be treated as either a direct cost or an allocated indirect cost. In regard to the latter, the percentage of costs generally charged to federal assistance programs for a single organization wide audit may not exceed the percentage that the Subrecipient's federal funds represent of total funds expended by the entity during the applicable year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual costs.

SECTION 14 - CONFIDENTIALITY

In order to complete the obligations of this Agreement, each Party may require access to certain confidential information of the other Party (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which either Party or its licensors consider confidential) (collectively, "Confidential Information") of the disclosing Party or its licensors'. Each Party acknowledges and agrees that the Confidential Information is the valuable property of the other Party and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing Party and/or its licensors. Each Party (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the other Party or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court

or other governmental authority with proper jurisdiction, provided the receiving Party promptly notifies the disclosing Party before disclosing such information so as to permit the disclosing Party reasonable time to seek an appropriate protective order. Each Party agrees to use protective measures no less stringent than a Party uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

SECTION 15 - MONITORING AND EVALUATION

- 15.1 The City and/or applicable funding agency shall monitor Subrecipient's performance under this Agreement.
- 15.2 Subrecipient agrees that the City or applicable funding agency shall have the right, upon reasonable notice, at all reasonable hours and without causing any unreasonable interruption to the operations of Subrecipient, to carry out monitoring and evaluation activities to ensure adherence by Subrecipient to the SOW and the provisions of this Agreement, and to ensure that the use of any amounts paid to Subrecipient under this Agreement are for eligible purposes in accordance with the requirements, including the right to inspect and audit all books, accounts, reports, files, records, contracts, and all other papers relating to the Program.
- 15.3 Subrecipient agrees to cooperate with the City or applicable funding agency in the development, implementation and maintenance of record-keeping systems and to provide data reasonably determined by the City or applicable funding agency to be necessary for the City or applicable funding agency to effectively fulfill its monitoring and evaluation responsibilities.
- 15.4 After each monitoring visit, the City shall provide Subrecipient with a written report of monitoring findings. For any cost that the City or applicable funding agency identifies as questionable in the City's written report, Subrecipient agrees it shall, within a reasonable time period mutually agreed upon by the Parties to this Agreement, provide a response and any requested documentation. Failure to provide adequate responses or documentation within this timeframe will result in additional actions as identified in Section 15.8 of this Agreement.
- 15.5 In the event the City or applicable funding agency is not satisfied with Subrecipient's written response and disallows the cost, the City may request Subrecipient to refund the amount of the cost. In such case the provisions regarding payment of disallowed cost set forth in Section 8.6 shall govern.
- 15.6 Copies of any monitoring or audit reports by any of Subrecipient's funding or regulatory bodies will, within fifteen (15) calendar days of receipt by Subrecipient be submitted to the City. In addition to the audit required by this Agreement, Subrecipient shall provide within fifteen (15) calendar days of receipt by

Subrecipient to the City such additional audited management letters or financial statements.

15.7 Upon request, Subrecipient agrees to cooperate with the City to schedule periodic reviews of its performance of this Agreement and of financial and operational records.

15.8 If the Subrecipient fails to adhere to the monitoring requirements in accordance with the terms and conditions of Section 15 of this agreement, The City may impose additional conditions, as described in §200.207 Specific Conditions including the following:

- i. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- ii. Requiring additional, more detailed financial reports;
- iii. Requiring additional program monitoring;
- iv. Requiring the Subrecipient to obtain technical or management assistance; or
- iv. Establishing additional prior approvals.

15.8.1 If the City determines that noncompliance cannot be remedied by imposing additional conditions, the City may take one or more of the following actions, as appropriate in the circumstances:

- i. Temporarily withhold payments pending correction of the deficiency by the Subrecipient or more severe enforcement action by the City;
- ii. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
- iii. Wholly or partly suspend or terminate the Federal award;
- iv. Recommend the initiation of suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations;
- v. Withhold further federal awards to the Subrecipient; or
- vi. Take other remedies that may be legally available.

SECTION 16 - DIRECTOR'S MEETINGS

Subrecipient shall inform the City of the dates and times of meetings of its board of directors **if relevant to this agreement**. Such notice shall be delivered to the City in a timely manner to give adequate notice and shall also include an agenda and a brief description of the matters to be discussed.

SECTION 17 - PERSONNEL POLICIES

Subrecipient shall maintain written policies and procedures approved by its governing body and shall make copies of all policies and procedures available to the City upon request. At a minimum, written policies shall exist in the following areas: Financial Management; Subcontracting and/or Procurement; Equal Employment Opportunity; Personnel and Personnel Grievance; Nepotism; Non-Discrimination of Clients; Client Grievance; Drug Free Workplace; the Americans with Disabilities Act; Conflict of Interest; Whistleblower; and Criminal Background Checks.

SECTION 18 - WORKFORCE

- 18.1 Subrecipient shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Agreement.
- 18.3 If the City or the City's representative notifies the Subrecipient that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Subrecipient shall immediately remove such worker from Agreement services, and may not employ such worker again on Agreement services without the City's prior written consent.

SECTION 19 - SUBCONTRACTING

- 19.1 This contract is exempt from Minority-Owned and Women-Owned Business Enterprises ("MBE/WBE") program provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code because the award is made with federal/state grants or City general fund monies to a non-profit entity where the City offers assistance, guidance or supervision on a program and the recipient of the grant award uses the grant monies to provide services to the community. Even though this contract is exempt, Subrecipient should strongly pursue participation by MBEs and WBEs and be able to show a good faith effort that the Subrecipient reached out to City-certified MBE and WBE businesses
- 19.2 Required Provisions In All Subcontracts: Work performed for the Subrecipient by a Subcontractor shall be pursuant to a written contract between the Subrecipient and Subcontractor. The terms of the subcontract may not conflict with the terms of the Agreement, and shall contain provisions that:
- 19.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement.
- 19.2.2 prohibit the Subcontractor from further subcontracting any portion of the Agreement without the prior written consent of the City and the Subrecipient.

- 19.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Subrecipient in sufficient time to enable the Subrecipient to include same with its invoice or application for payment to the City in accordance with the terms of the Agreement;
 - 19.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Recipient, with the City being a named insured as its interest shall appear; and
 - 19.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Subrecipient is required to indemnify the City.
- 19.3 The Subrecipient shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Subrecipient is responsible for the Subrecipient's own acts and omissions. Nothing in the Agreement shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- 19.4 The Subrecipient shall pay each Subcontractor its appropriate share of payments made to the Subrecipient not later than five (5) business days after receipt of payment from the City.
- 19.5 Subrecipient agrees that no subcontract placed under this Agreement shall provide for payment on a cost plus a percentage of cost basis.
- 19.6 HACA and/or its subcontractors can contract directly with appropriate nonprofit organizations, except for organizations that were contracted for RENT 2.0 and have outstanding deliverables.

SECTION 20 - EQUAL OPPORTUNITY

- 20.1 **Equal Employment Opportunity.** No Subrecipient or Subrecipient's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No bid submitted to the City shall be considered, nor any purchase order issued, or any contract awarded by the City unless the Subrecipient has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Subrecipient shall sign and return the Non-Discrimination Certification attached hereto as Exhibit B. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Agreement and the Subrecipient's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

- 20.2 Termination for Noncompliance: In the event of Subrecipient's or its subcontractor's non-compliance with the non-discrimination requirements of this Section 20, this Agreement may be canceled, terminated, or suspended in whole or in part upon written notice by the City to Subrecipient, and Subrecipient or its subcontractor may be debarred from further contracts with the City and/or applicable agencies.
- 20.3 Subrecipient shall administer the program in a manner to affirmatively further the policies of the Fair Housing Act as established on 24 CFR Part 570.601, 602 and 608.

SECTION 21 - REPRESENTATIONS AND WARRANTIES

21.1 Subrecipient represents and warrants that:

- 21.1.1 All information, reports and data previously or subsequently requested by the City and furnished to the City was complete and accurate as of the date shown on the information, data or report, and since that date have not undergone any significant change without written notice to the City.
- 21.1.2 Any supporting financial statements previously requested by the City, and furnished to the City, were complete, accurate and fairly reflect the financial condition of Subrecipient as of the date shown on said report, and the results of the operation for the period covered by the report, and since said date there has been no material change, adverse or otherwise, in the financial condition of Subrecipient.
- 21.1.2.3 No litigation or proceedings are presently pending or threatened against Subrecipient that prohibits Subrecipient from carrying out the provisions of this Agreement.
- 21.1.3 None of the provisions of this Agreement contravenes or is in conflict with the authority under which Subrecipient is doing business or with the provisions of any existing indenture or agreement of Subrecipient.
- 21.1.4 Subrecipient has the power to enter into this Agreement and accept payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.
- 21.1.5 If Subrecipient furnished the City with Subrecipient's financial statements, none of the assets of Subrecipient is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by Subrecipient to the City.
- 21.1.5.3 Subrecipient is not in default on any obligations, covenants, or conditions contained in any bond, debenture, note, or other

evidence of indebtedness or any mortgages or collateral instruments securing the same. Subrecipient also covenants that the making of this Agreement and the consummation of the transaction contemplated herein will not violate any provision of law or result in any breach or constitute a default under any agreement to which Subrecipient is presently a party, or result in the creation of any lien, charge or encumbrance upon any of its property or its assets other than as specifically may be allowed under this Agreement including without limitation the City's liens and security interests.

21.1.5.3 As applicable, Subrecipient shall promptly and completely file all tax returns which are required and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments received by Subrecipient. Subrecipient covenants that no tax liability has been asserted against Subrecipient by the Internal Revenue Service or any other taxing authority for taxes in excess of those already paid and Subrecipient knows of no basis for any such deficiency assessment.

21.1.5.3 As applicable, Subrecipient shall submit to the City annually paid tax receipts showing that current ad valorem taxes on the real and personal property situated therein have been paid, or an affidavit stating that no current taxes on the property are due.

21.1.5.4 Subrecipient shall submit to the City evidence that each insurance policy required by this Agreement is in force and effect and that all premiums have been paid.

21.2 Subrecipient shall use the proceeds of this Agreement only for the purposes and in the amounts stated in this Agreement and the SOW and budget.

21.3 Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by Subrecipient with the submission of each invoice.

SECTION 22 - GRATUITIES

The City may, by written notice to Subrecipient, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by Subrecipient or any agent or representative of Subrecipient to any officer or employee of the City with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and

remedies, to recover or withhold the amount of the cost incurred by the Subrecipient in providing such gratuities.

SECTION 23 - INDEPENDENT CONTRACTOR

The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. Subrecipient's services shall be those of an independent contractor. Subrecipient agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

SECTION 24 - NEPOTISM

Unless approved by the City, Subrecipient shall not employ in any paid capacity any person who is a member of the immediate family of 1) a person who is currently employed by the City or Subrecipient; or 2) a member of the City or Subrecipient's governing body. The term "member of the immediate family" includes: wife, husband, son, daughter, mother, father, brother, sister, grandfather, grandmother, grandson, granddaughter, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, niece, first cousin, stepparent, stepchild, half-brother, and half-sister. Notwithstanding the foregoing, Subrecipient may employ such person if it obtains a written waiver from the City.

SECTION 25 - POLITICAL ACTIVITY

None of the performance rendered hereunder shall involve, and no portion of the funds received by the Subrecipient hereunder shall be used for, any political activity (including, but not limited to, an activity to further the election or defeat of any candidate for public office) or any activity undertaken to influence the passage, defeat or final content of legislation.

SECTION 26 - SECTARIAN ACTIVITY

None of the performance rendered under this Agreement shall involve, and no portion of the funds received by the Subrecipient under this Agreement shall be used for, any sectarian or religious activity.

SECTION 27 - NO CONTINGENT FEES

Subrecipient warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by Subrecipient for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and

to deduct from any amounts owed to Subrecipient, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 28 - INDEMNITY/CLAIMS

28.1 Indemnity.

28.1.1 Definitions:

28.1.1.1 “Indemnified Claims” shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

28.1.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, Subrecipient, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

28.1.1.1.2 death, bodily injury, illness, disease, worker’s compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, Subrecipient, the Subrecipient’s subcontractors, and third parties),

28.1.1.1.3 “Indemnified claims” expressly excludes suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism related to government investigations or disallowance of expenditures under the RENT 3.0 program to non U.S. citizens. The City is solely liable and responsible for all liability and costs associated with investigations, challenges and claims related to distribution of funds to non-U.S. citizens.

28.1.1.2 “Fault” shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

28.1.2 TO THE EXTENT PERMISSIBLE BY LAW, **THE SUBRECIPIENT SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF SUBRECIPIENT, OR SUBRECIPIENT’S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF SUBRECIPIENT’S**

OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE SUBRECIPIENT (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD-PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM EXCEPT TO THE EXTENT THAT SUCH CLAIMS, LIABILITIES, LOSSES OR EXPENSES ARISE FROM OR IN CONNECTION WITH ANY GROSSLY NEGLIGENT ACT OR OMISSION OF THE CITY.

- 28.2 **Notice of Claims.** If any claim, demand, suit, or other action is asserted against the City or Subrecipient which arises under or concerns the Agreement, or which could have a material adverse effect on the City or Subrecipient's ability to perform hereunder, City or Subrecipient shall give written notice thereof to the other party within ten (10) calendar days after receipt of notice. Such notice to the City or Subrecipient shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767. Deliver to Subrecipient shall be made The Housing Authority for the City of Austin, Attn: Michael Gerber, President and Chief Executive Officer, 1124 S IH 35 Frontage Road, Austin, Texas 78704.

SECTION 29 - RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

- A. All reports, charts, schedules, data stored on computer disk, or other appended documentation to any proposal, content of basic proposal, or contracts and any responses, inquiries, correspondence, and related material prepared or submitted to the City by Subrecipient (including, without limitation, Subrecipient's independent professional associates and consultants and subcontractors) shall become the property of the City upon receipt, whether the Program is completed or not. Any portions of such material claimed by Subrecipient to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. Upon this Agreement's expiration or termination, the City may require any or all of these items to be delivered to the City upon written notice to Subrecipient.
- B. In accordance with Texas Government Code §552.372 , if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:

- i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
 - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
 - iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

SECTION 30 - COPYRIGHTS AND RIGHTS IN DATA

- 30.1 **Patents.** As to any patentable subject matter contained in the itemized deliverables, the Subrecipient agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Subrecipient agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City. Subcontractors are utilizing proprietary software products in the performance of this contract and neither the City nor Subrecipient acquire any rights thereto pursuant to this contract.
- 30.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Subrecipient agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Subrecipient for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Subrecipient hereby assigns to the City (and agrees to cause each of its employees

providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Subrecipient agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request. Neither the City nor Subrecipient shall acquire any rights thereto of proprietary software products used in the performance of this contract.

- 30.3 **Additional Assignments.** The Subrecipient further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Subrecipient's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Subrecipient agrees to treat the same as Confidential Information under the terms herein.

SECTION 31 - MAINTENANCE OF RECORDS

- 31.1 Subrecipient agrees to maintain records that will provide accurate and complete disclosure of the status of the funds received under this Agreement in accordance with any applicable laws and regulations establishing standards for financial management. Subrecipient's record system shall contain sufficient documentation to provide support and justification for each expenditure to allow authorized persons from the City and any other entity authorized by the City to determine whether the Program has been carried out in accordance with this Agreement and applicable requirements. Nothing in this Section shall be construed to relieve Subrecipient of fiscal accountability and liability under any other provision of this Agreement or any applicable law. Subrecipient shall include the substance of this provision in all subcontracts, where applicable.
- 31.2 Subrecipient agrees to retain all books, records, documents, reports and written accounting policies and procedures pertaining to the operation of programs and expenditures of funds under this Agreement for the period of time and under the conditions as specified in applicable federal or local regulations. (Note: The City policy is that contractors shall retain all records for a period of three years after final payment on the agreement or until all audit and litigation matters that the

City has brought to the attention of the contractor are resolved, whichever is longer).

- 31.3 Nothing in the above subsections shall be construed to relieve Subrecipient of responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this Agreement sufficient for the City to meet all reporting requirements. At reasonable times, mutually agreed upon by the Parties to this Agreement, and as often as the City may reasonably deem necessary, Subrecipient shall make available to the City, or applicable funding agency, or any of their authorized representatives, at Subrecipient's regular place of business, all of its records related to all matters covered by this Agreement and shall permit the City to audit, examine, make excerpts and copies of such records, and to make audits of all contracts, invoices, materials, payrolls, and other data relating to matters covered by this Agreement.

SECTION 32 - PUBLICATIONS

All published material and written reports submitted under the Agreement must be originally developed material unless otherwise specifically provided in the Agreement. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 33 - PUBLICITY

The Subrecipient shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into this Agreement, except to the extent required by law.

SECTION 34 - INSURANCE

The following insurance requirements apply to this Agreement.

34.1 General Requirements

- 34.1.1 The Subrecipient shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement and during any warranty period.
- 34.1.2 The Subrecipient shall provide a certificate of insurance as verification of coverages required below to the City at the below address prior to contract execution and within fourteen (14) calendar days after written request from the City.
- 34.1.3 The Subrecipient must also forward a certificate of insurance to the City whenever a previously identified policy period has expired, or an

extension option or holdover period is exercised, as verification of continuing coverage.

- 34.1.4 The Subrecipient shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Subrecipient hereunder and shall not be construed to be a limitation of liability on the part of the Subrecipient.
- 34.1.5 The Subrecipient must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the Program.
- 34.1.6 The Subrecipient's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the state of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- 34.1.7 All endorsements naming the City of Austin as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance shall contain the Subrecipient's email address, and shall be mailed to the following address:

Housing and Planning Department
1000 East 11th Street
Austin, Texas 78702
- 34.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Subrecipient, shall be considered primary coverage as applicable.
- 34.1.9 If insurance policies are not written for amounts specified, the Subrecipient shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 34.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the Parties hereto or the underwriter on any such policies.

- 34.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Subrecipient.
- 34.1.12 The Subrecipient shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.
- 34.1.13 The Subrecipient shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance.
- 34.1.14 The Subrecipient shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.
- 34.2 **Specific Coverage Requirements.** The Subrecipient shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Subrecipient.
- 34.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.
- 34.2.1.1 Contractual liability coverage for liability assumed under the Agreement and all other Contracts related to the Program
- 34.2.1.2 Contractors/Subcontracted Work
- 34.2.1.3 Products/Completed Operations Liability for the duration of the warranty period
- 34.2.1.3.1 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
- 34.2.1.3.2 Thirty (30) calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
- 34.2.1.3.3 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

34.2.2 **Business Automobile Liability Insurance**. The Subrecipient shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

34.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage

34.2.2.2 Thirty (30) calendar days' Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage

34.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage

34.2.3 **Worker's Compensation and Employers' Liability Insurance**. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

34.2.3.1 The Subrecipient's policy shall apply to the State of Texas

34.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage

34.2.3.3 Thirty (30) calendar days' Notice of Cancellation, Form WC 420601, or equivalent coverage

34.2.4 **Directors and Officers Insurance** . Coverage with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The coverage shall be continuous for the duration of the Agreement and for not less than twenty-four (24) months following the end of the Agreement. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the Agreement. The Subrecipient shall, on at least an annual basis, provide the City with a certificate of insurance as evidence of such insurance.

- 34.3 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval, which shall not be unreasonably withheld.

SECTION 35 - BONDING

- 35.1 Bonds, when required, must be executed on forms furnished by or acceptable to the City. Subrecipient shall furnish the City proof of an adequate bond prior to the earlier of thirty (30) calendar days from the date the City requested the bond or payment of any funds to Subrecipient by the City under this Agreement.
- 35.2 If the surety on any bond furnished by Subrecipient is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of this Agreement, Subrecipient must substitute another bond and surety, both of which must be acceptable to the City.
- 35.3 When performance bonds and/or payment bonds are required in accordance with the SOW, each bond must be issued in an amount of one hundred percent (100%) of the maximum payment liability set forth in this Agreement, as security for the faithful performance of all Subrecipient's obligations under this Agreement. Performance bonds and payment bonds must be issued by a solvent surety company authorized to do business in the State of Texas, U.S. Treasury listed, and with an A.M. Best rating of A- or better, or otherwise acceptable to the City.

SECTION 36 - FEE FOR SERVICES

Subrecipient shall not charge any fees to Program participants for services provided in connection with this Agreement.

SECTION 37 - ASSIGNMENTS

The Agreement shall be binding upon and endure to the benefit of the City and the Subrecipient and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Subrecipient without the prior written consent of the City. Any attempted assignment or delegation by the Subrecipient shall be void unless made in conformity with this paragraph. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the Parties that there be no third-party beneficiaries to the Agreement.

SECTION 38 - CHANGES AND AMENDMENTS

The Agreement can be modified or amended only in writing and signed by both Parties prior to implementation of modification. No pre-printed or similar terms on any

Subrecipient invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

SECTION 39 - NON-WAIVER OF PROVISIONS

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved Party. No waiver by either the Subrecipient or the City of any one or more events of default by the other Party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

SECTION 40 - SURVIVAL OF AGREEMENT PROVISIONS

All provisions of the Agreement that impose continuing obligations on the Parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the Parties, shall survive the expiration or termination of the Agreement for any reason.

SECTION 41 - NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from federal, State of Texas, or City contracts. By accepting a contract with the City, the Subrecipient certifies that its firm and its principals are not currently suspended or debarred from doing business with the federal government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City.

SECTION 42 - SEVERABILITY OF PROVISIONS

The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

SECTION 43 - DISPUTE RESOLUTION

43.1 If a dispute arises out of or relates to the Agreement, or the breach thereof, the Parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of

limitations or to seek injunctive relief. Either Party may make a written request for a meeting between representatives of each Party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the Parties. Each Party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both Parties, in which event the Parties may proceed directly to mediation as described below.

- 43.2 If the efforts to resolve the dispute through negotiation fail, or the Parties waive the negotiation process, the Parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Subrecipient agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the Parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The Parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Subrecipient will share the costs of mediation equally.

SECTION 44 - CHOICE OF LAW AND VENUE

The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the Parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

SECTION 45 - INTERPRETATION

The Agreement is intended by the Parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the Parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one Party, it is the intent of the Parties that all provisions be construed in a manner to be fair to both Parties, reading no provisions more strictly against one party or the other. In the event any disagreement or dispute should arise between the Parties hereto pertaining

to the interpretation or meaning of any part of this Agreement or its governing rules, codes, laws, ordinances or regulations, the City as the Party ultimately responsible for matters of compliance will have the final authority to render or to secure an interpretation and Subrecipient shall not be liable for relying on such interpretation if such interpretation is in writing and is later found to be incorrect.

SECTION 46 - REVERSION OF ASSETS

Upon the expiration or termination of the Agreement, Subrecipient must transfer to the City any funds on hand at the time of expiration or notice of termination and any accounts receivable attributable to the use of funds.

SECTION 47 - ENTIRE AGREEMENT

This Agreement contains the complete and entire agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the Parties respecting the subject matter hereof. The terms and conditions set forth in this Agreement constitute the entire agreement between the Parties and any oral representations on the part of either Party, its representatives or assigns, shall have no force or effect whatsoever. This Agreement shall be binding upon the Parties, their successors, and assigns.

SECTION 48 - CONFLICT OF INTEREST

- 48.1 In addition to the conflicts prohibited by Section 4.3, Subrecipient covenants that neither it nor any member of its governing body presently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Subrecipient further covenants that in the performance of this Agreement no person having such interest shall be employed or appointed as a member of its governing body.
- 48.2 Subrecipient further covenants that no member of its governing body or its staff, subcontractors or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others; particularly those with which they have family, business, or other ties.
- 48.3 No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the

knowledge, expressed or implied, of the Subrecipient shall render the Agreement voidable by the City.

- 48.4 However, in the event Subrecipient determines that exception to HUD's conflict of interest requirements is appropriate and in accordance with 24 CFR §570.611(d), Subrecipient may prepare the documentation required by this provision and transmit such material to City. Upon receipt, City may submit the request to HUD for a determination. The parties agree to accept the final HUD determination.

SECTION 49 - NOTICES

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Subrecipient shall be addressed as follows:

Notice or communication to Subrecipient shall be directed to:

The Housing Authority for the City of Austin
Attn: Michael Gerber, President and Chief Executive Officer
1124 S IH 35 Frontage Road
Austin, Texas 78704

Notice or communication to the City shall be directed to:

Housing and Planning Department
Attn: Rosie Truelove, Director
1000 East 11th Street
Austin, Texas 78702

or addressed in such other way as either Party may from time to time designate in writing dispatched as provided in this Section.

SECTION 50 - COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS

Subrecipient, its subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by City and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirement shall govern. Subrecipient shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Subrecipient's obligations under this paragraph.

SECTION 51 - STOP WORK NOTICE

A stop work notice ("Stop Work Notice") may be issued in the event Subrecipient is observed performing in a manner that is in violation of federal, state, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, Subrecipient will cease all work until notified that the violation or unsafe condition has been corrected. Subrecipient shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice unless City's determination is found to have been incorrect by a court of competent jurisdiction.

SECTION 52 - DELAYS

- 52.1 The City may delay scheduled delivery or other due dates by written notice to Subrecipient if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and Subrecipient shall negotiate an equitable adjustment for costs incurred by Subrecipient in the Agreement price and execute an amendment to the Agreement. Subrecipient must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the dispute resolution process specified in Section 43. However, nothing in this provision shall excuse Subrecipient from delaying the delivery as notified.
- 52.2 Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, pandemics, epidemics, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Agreement performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

SIGNATURES ON FOLLOWING PAGE

In witness whereof, the Parties have caused duly authorized representatives to execute this Agreement on the dates set forth below.

Subrecipient: ~~The~~ Housing Authority of the City of Austin

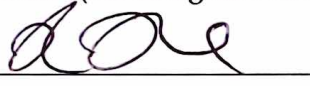
By: 
Signature

Printed Name: Michael Gerber

Title: President & CEO

Date: March 13, 2021

City: City of Austin (Housing and Planning Department)

By: 
Signature

Printed Name: Rosie Truelove

Title: Director

Date: 3/13/2021

Approve as to form:

By: Brandon W. Carr
Brandon W. Carr, Assistant City Attorney

EXHIBITS:

A – Statement of Work/Description of Program

B – Non-Discrimination Certificate

C – Non-Suspension or Debarment Certification

EXHIBIT A

Statement of Work

The Housing Authority of the City of Austin

PURPOSE:

The purpose of this Agreement with **The Housing Authority of the City of Austin (HACA)** ("Subrecipient") is to administer the **Relief of Emergency Needs for Tenants (RENT) 3.0 Program**. Specifically, the intent of this Program is to provide emergency rental assistance to households impacted by COVID-19 to provide them with financial rental assistance related to inability to pay rent as a result of this health pandemic. This program is designed to be a short-term solution and a rapid response to those experiencing financial hardships as a result of COVID-19 and the City of Austin's goals to provide stable housing options for families. This effort will help the department in its mission of preventing community member displacement.

SECTION I: PROGRAM REQUIREMENTS & PROJECT SCOPE

The **Relief of Emergency Needs for Tenants (RENT) Program** is funded by the City of Austin (City). The funds are to be used to pay the rent of eligible households at an eligible property as rental assistance for the amount of the monthly rent payment. Funds will be paid directly to the landlord. To expand the reach of the RENT 3.0 program to Austin's renters most in need, the Subrecipient will hire a creative agency with demonstrated experience providing production support in executing the City's marketing strategy and deliverables.

The City is contracting with HACA to deploy emergency rental assistance for individuals and households impacted by the economic fallout due to COVID-19. The Subrecipient will be responsible for outreach and marketing efforts to ensure funds are provided in a manner that affirmatively furthers fair housing and is compliant with all fair housing requirements. The Housing & Planning Department will provide direction and approval on all key communications through regular reviews and weekly meetings. A list of activities is outlined and will be made available to HACA and the contracting Producer. All materials produced (final, imagery and productions files) will be the property of HPD.

HACA and/or its designated subcontractor(s) will complete the following deliverables:

DIRECT RENTAL ASSISTANCE

- 1) Implement a rental assistance program;
- 2) Provide access to an applicant portal;
- 3) Establish and maintain a call center;
- 4) Qualify eligible participants;
- 5) Remit payment to landlords;
- 6) Provide regular reports of program activity;

- 7) Submit proper reimbursement invoices, including required documentation; and
- 8) Ensure compliance with developing and maintaining all required files, documents and required reports.

MARKETING, COMMUNICATIONS & OUTREACH

- 9) Scheduling and buying media as outlined in the provided media buy list.
- 10) Provide media tears, screen captures or videos of all published buys.
- 11) Weekly reporting to HPD on progress and performance metrics on media buys.
- 12) Production of media segments.
 - a. TV Look Lives, (stations identified in provided marketing strategy), radio interviews, and live Townhalls on social media.
- 13) Production of marketing collateral from provided creative for campaign alignment & consistency.
 - a. Advertisements, banners, signage, print pieces, and paid social posts.
- 14) Client testimonials
 - a. Collection, creative design, and strategic uses. Maintain and curate program testimonials, including a complete inventory, collection of accompanying permissions and adaptations to include potential visual aids such as photos and videos, if applicable. All program testimonials and narratives must be made available to the City's program staff.
- 15) Identify and recommend appropriate platforms and channels to distribute narrative testimonials
- 16) Identify and recommend appropriate schedules for testimonial distribution given program deadlines, random selection dates and ensure pushes align with campaign schedule.
- 17) Project Management
 - a. Distribution of print collateral to community partners.
 - b. Creation of online order form, managing process, scheduling & distribution to community partners.
 - c. All Media Buying, Creative Production and other deliverables are outlined, budgeted and maintained by the City's staff (See "Governance").
- 18) Community Engagement Consulting for Focus Community
 - a. Hire Community Engagement Consultant to Identify Contact List and Executive Engagement Activities for Focus Population.
 - b. Maintain contact list of Black and African American community organizations and groups that are connected with potentially qualified applicants for the RENT program.
 - c. Distribute digital and print promotional kits to Black and African American community organizations and groups. Provide education on program guidelines, eligibility and answer questions to those groups.
 - d. Identify, recommend and (upon approval from the City) engage in promotional tactics to increase awareness of available rental assistance programs and resources.
 - e. Encourage organizations to assist renters with their application and with uploading their documents.

- f. Identify regular engagement opportunities for community partners seeking to provide information and promote participation in the RENT program, such as phone calls/webinars.
 - g. Assist with the promotion and distribution of print and digital RENT program information to communities through direct and indirect tactics as appropriate
- A. **Eligibility**
HACA, and/or its designated sub-contractors, will be responsible for determining eligibility based upon provided criteria and applicable income guidelines. Eligibility shall be based on the client's gross annual household income and may not exceed eighty percent (80%) of the Fiscal Year 2020 Area Median Family Income limits for the Austin-Round Rock-San Marcos, TX MSA (AMFI). This means that the income of every adult, as provided by the applicant, that resides in the eligible property must be factored into the income calculation. For purposes of this Agreement, an "adult" is defined as an individual who is 18 years of age or older or a minor under the age of 18 who has been emancipated to act on his/her own behalf, including the ability to execute a contract or lease. Rental assistance shall only be provided for housing located in the corporate limits of the City of Austin and the City of Austin full-purpose jurisdiction.

FY 2020 Income Limits Summary - Austin-Round Rock-San Marcos, TX MSA

FY 2020 Income Limit Category	Persons in Household							
	1	2	3	4	5	6	7	8
Low (80%) Income Limits (\$)	54,700	62,500	70,300	78,100	84,350	90,600	96,850	103,100

- B. **Demonstration of COVID-19 Financial Hardship**
Program participants must demonstrate inability to pay their full rent as a result of a COVID-19 financial hardship, and per City-approved documentation, and:
- B.1 Attest to the fact that they have a current **Traditional Lease** that has or has not been extended month to month; OR
 - B.2 Attest to the fact that they have been staying at an extended stay/hotel/motel; OR
 - B.3 Attest to the fact that they are subletting with a lease agreement and/or payment receipts.
- C. Eligible household income may not exceed eighty percent (80%) of the Fiscal Year 2020 Area Median Family Income limits for the Austin-Round Rock-San Marcos, Texas MSA.
- D. Eligible households must be located in the City of Austin full-purpose jurisdiction.

SECTION II: DELIVERABLES

In order for Subrecipient to qualify for the \$25,030,970.00 for emergency rental assistance plus \$4,436,818.00 for operations related expenditures, for a grand total of \$29,467,788.00, the Subrecipient must provide the following deliverables:

- A. *Provide rent assistance on behalf of eligible households with payments made directly to property owners/managers.* Rental assistance will be provided on behalf of eligible households unable to pay full rent as a result of a COVID-19 financial hardship, and who require assistance to maintain housing. The amount of rental assistance is determined on a single household basis.
- B. Verify participant's eligibility as defined below.
- C. Provide and Maintain accurate records as defined below.
- D. Marketing, Communications and Outreach as defined below.
- E. Any program extension or holdover shall require additional payments to Subrecipient under mutually agreed upon additional terms.

VERIFICATION PROCESS

HACA, and/or its designated subcontractors, will be responsible for receiving applications, verifying eligibility, and issuing rental assistance payments on behalf of eligible households directly to landlord.

Upon receipt of the household's application, HACA will verify the following.

1. Verify all reported sources of income and determine if the household's total gross income is at or below eighty percent (80%) of the FY 2020 Area Median Family Income limits for the Austin-Round Rock-San Marcos, TX MSA (AMFI);
2. Verify that rental assistance is needed due to a COVID-19 related financial hardship;
3. Confirm that the household is not receiving rental assistance through another rental assistance program to include any HUD subsidized housing programs (example: Housing Choice Voucher program, Home Tenant Based Rental Assistance program, Project-based Rental Assistance, Project Based Voucher, public housing or other state or city rental assistance programs).

REQUIRED DOCUMENTS TO VERIFY ELIGIBILITY

The following documents will be required to determine eligibility.

Tenant required documents

1. A complete and accurate application for emergency rental assistance;
2. COVID-19 verification statement that rental assistance is needed due to a COVID-19 financial hardship.
3. Verification of income eligibility to include verification of current income and loss of income due to COVID-19 (verification could include documents received directly from the employer or agency; online verification methods; or documents provided directly from the household)
4. Completed/signed copies of lease or other written agreement between client and landlord or assigns;
5. A certification from the head-of-household that they are not receiving any other rental subsidies to pay rent for the current lease; and
6. Other appropriate documentation that may be needed to substantiate program eligibility and the property location.

Landlord required documents

1. City-approved landlord Certification Form;
2. W9;
3. Copy of first page and signature page of current lease between client and landlord (if tenant is unable to provide)

HACA DOCUMENTATION REQUIREMENTS

HACA shall ensure that the following information and documents are available for review by the City.

1. Tenant application with full name of all household members
2. Residential address and contact information
3. Income eligibility determination/documentation
4. Submitted pages of lease between tenant and landlord
5. COVID-19 verification statements from tenant
6. Signed Owner Request for Payment and Acknowledgment form
7. W9 Form from owner/landlord
8. Ethnicity or race of head of household (included in application)
9. Gender and age of persons in household (included in application)

SECTION III: COMPENSATION

- A. Subrecipient shall submit to the City, no more than one invoice monthly for indirect Services, unless otherwise approved in writing by the City.
- B. The method of compensation which Subrecipient will utilize is described in Section V of this Statement of Work. The term “invoice” will be used when referencing a “pay request” or a “request for payment” of an indirect service, while the term draw request” will be used when referencing a pay request for direct services. All Invoices and Draw Requests must meet the following requirements:

1. Must have a unique invoice number that cannot be duplicated.
2. Must include a date and the date cannot exceed 5 days from the date in which the invoice is received by the City.
3. Must include vendor name and address and must match exactly to that found in the City's Vendor database.
4. Must contain a description of the items purchased or services completed.
5. Draw Requests must include verifiable documentation of items purchased or services completed.

Upon review of all invoices, monthly reports, and support documentation received from Subrecipient, the City will, if applicable, provide written notification to Subrecipient regarding any reimbursement items which may be disallowed pursuant to the terms of the Agreement, as well as of any aspect of the submittal that may require either clarification or corrective action(s) along with recommendations for making corrections. Subrecipient will have thirty (30) calendar days from receipt of the written correspondence/notification, in which to submit corrections before reimbursement is made.

All items identified within the Deficiency Notice for any given month, must be resolved before a subsequent month's payment request may be submitted for reimbursement. Should a revised invoice be required, the new invoice must contain the date in which the revised invoice is being submitted.

SECTION IV: PAYMENT REQUESTS

- A. The City shall pay the draw requests for direct services within no more than 7 business days of receipt and the invoice for indirect services within no more than 10 business days of receipt.
- B. Subrecipient shall promptly notify the City in writing, of any overpayments or necessary Adjustments. Reimbursements for any overpayment or under payment and any necessary adjustments shall be made to the City, within thirty (30) calendar days following the date of discovery by either Party.
- C. The City may request additional program or financial information regarding the activity as may be necessary to address specific requests from the City of Austin, auditors or stakeholders.

Source Documentation

All required documents outlined in the "HACA's DOCUMENTATION REQUIREMENT" Section of this Contract will be kept electronically and available for review upon request. In order for each invoice to be reimbursed, Subrecipient shall include, at a minimum the following:

1. A complete and accurate invoice or draw request, each bearing a unique number;
2. For the draw requests, a spreadsheet with head-of-household's name, address, landlord/property owner name and address, and approved rent amount; and other documentation that may be needed to substantiate an eligible client, an eligible property owner and eligible operational expenses incurred by the Subrecipient during the agreement period may also be requested;
3. For invoices, a summary of services provided and activities performed during the period covered by the invoice.

SECTION V: REPORTING/DOCUMENTATION REQUIREMENTS

In addition to the documentation listed in Section V above, as part of each payment request being submitted, Subrecipient shall also provide the following correct and completed Reports to the City:

- A. A Monthly Performance Report detailing the accomplishments during each reporting period.
- B. A Monthly Demographic Report, profiling all clients served during the reporting period.
- C. A Monthly Project Report with all information identified/requested within the report.

Subrecipient shall ensure that all reporting documents include unduplicated (first-time) clients. An unduplicated client count shall be defined as a client who was reported/counted only once during the Agreement term, regardless of the number of times assistance was provided. For the purposes of this Agreement, each unduplicated client reported in each monthly Performance Report, in each monthly Demographic Report, and in each monthly Project Report, shall correspond to a client file set-up and maintained by Subrecipient. The Subrecipient's client file shall minimally contain the following:

1. Tenant application with full name of all household members;
2. Residential address and contact information;
3. Income eligibility determination/documentation;
4. Copies of first page and signature page of lease (or other approved documentation) between participant and landlord
5. COVID-19 verification statements from tenant
6. Signed Owner Request for Payment and Acknowledgment form
7. W9 form
8. Ethnicity or race of head of household (included in application)
9. Gender and age of persons in household (included in application)

- D. Other contractually required reports shall include but are not limited to:

1. A Close-Out Report.

Subrecipient must complete and submit to the City for review and approval, a “Close-Out Report,” no later than sixty (60) calendar days from the last reporting month of the contract term, which is December 31, 2021.

Should a reporting due date fall on a Saturday, reporting shall be due the day before, on Friday. Should a reporting due date fall on a Sunday, reporting is due the day after on Monday.

SECTION VI: OTHER RELATED REQUIREMENTS

A. Section 504 Requirements. In order to comply with the Americans with Disabilities Act (ADA) and Section 504 notice requirements, the language stated in **Attachment 6** must be included in all Subrecipient’s documents related to the **RENT Program**.

a. Notices are required to be published in both English and Spanish.

B. Publicity Requirements. All print, video, and audio media which makes reference to Subrecipient’s program and which is intended for public distribution shall contain a statement to the effect that the funding for the program is provided by a grant from the U.S. Department of Housing and Urban Development through the City of Austin and the Neighborhood Housing and Community Development Office. Examples include but are not limited to: brochures, pamphlets, flyers, signs, posters, annual reports, press releases, and public service announcements.

Notices are required to be published in both English and Spanish.

C. Availability of Services. Subrecipients’ regular hours of operation are: 8:00 AM to 5:00 PM, Monday through Friday. Services may be offered on weekdays, evenings, and Saturdays depending on demand. The following holidays are observed by the City and the Subrecipient:

Holiday Date	Observed
New Year’s Day	January 1
Martin Luther King, Jr.’s Birthday	Third Monday in January
President’s Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 18
Independence Day	July 4

Labor Day	First Monday in September
Columbus Day	October 12
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

- D. Violence Against Women Act (VAWA). Subrecipient will carry out each activity in compliance with all federal laws and regulations described in 24 CFR 92, Subpart H, including 24 CFR 92.352 (except for the City's responsibilities for the environmental review, if applicable) and 24 CFR 92.357. Subrecipient must be in compliance and meet all the VAWA requirements in accordance with 24 CFR 92.359. In addition, the VAWA requirements apply for the period for which the rental assistance contract is provided. Subrecipient must develop forms and applicable procedures to implement this regulation and provide the notices and certifications required under 24 CFR 5.2005.
- E. Duplication of Benefits Policy. To comply with the Verification Process in Section II (Deliverables), subsection 3, of this Statement of Work, Subrecipient shall develop a policy to avoid the duplication of benefits to rental assistance recipients, also known as a Duplication of Benefits Policy. Subrecipient shall provide a copy of said policy to City within 10 days of the execution of the Agreement.

ATTACHMENTS:

1. Payment Schedule
2. Performance Report (to be submitted by Subrecipient)
3. Demographic Report (to be submitted by Subrecipient)
4. Project Report (to be submitted by Subrecipient)
5. Close-out Report (to be submitted by Subrecipient)
6. Section 504/ADA Requirements
7. Appendix 1 - Definitions

ATTACHMENT 1 - PAYMENT SCHEDULE

SCHEDULE OF PAYMENTS				
MONTH	FIXED FEE	MOBILIZATION FEE	MARKETING FEE	TOTAL
March	\$414,781.80	\$150,000.00	\$139,000.00	\$703,781.80
April	\$414,781.80			\$414,781.80
May	\$414,781.80			\$414,781.80
June	\$414,781.80			\$414,781.80
July	\$414,781.80			\$414,781.80
August	\$414,781.80			\$414,781.80
September	\$414,781.80			\$414,781.80
October	\$414,781.80			\$414,781.80
November	\$414,781.80			\$414,781.80
December	\$414,781.80			\$414,781.80
TOTAL				\$4,436,818.00

Exhibit B
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 13th day of March, 2021

Subrecipient
Authorized
Signature



Title

CEO

APPENDIX 1 – Definitions

1. **Draw Request(s)** – The term draw request(s) in this contract refers to an invoice that is submitted to the City by the Subrecipient requesting reimbursement of direct program expenses. This term is being used in lieu of the word “Invoice” to make a clear distinction between the two forms of reimbursements that will be sought for this contract. Separate invoices are required for this contract for direct costs and indirect costs.
2. **Landlord/Property Owner/Manager** – term that represents the individual/company/entity representing the owner of the renter’s dwelling unit and has authority to sign the required Certification Form and accept payment on behalf of the person representing said Landlord/Property Owner/Manager. Also known as Landlord or Manager or Owner Agent.
3. **Program** - the City has been awarded federal funding to alleviate the impacts of the COVID-19 pandemic, and desires to provide rental assistance to low-income households negatively affected by the COVID-19 pandemic.
4. **Start-up Costs** – Also referred to as a “Mobilization Fee” in this contract, it refers to a flat fee charged by the subrecipient to cover planning costs and other program development costs associated with the launch of the program.
5. **Traditional Lease** – A fully executed Texas Standard Residential Lease Agreement between the property owner and program participant that is already in effect prior to the issuance of rental assistance for related activities.