K22-085

SUBRECIPIENT AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

UNITY OF GREATER NEW ORLEANS, INC.

FOR

ESG CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

Subrecipient DUNS # 80-719-4865

Federal Award Identification Number: E-20-MW-22-0006

Federal Award Date: 10/28/2020

THIS SUBRECIPIENT AGREEMENT (the "**Agreement**") is made and entered into by and between the City of New Orleans, herein represented by LaToya Cantrell, Mayor (the "**City**") and UNITY of Greater New Orleans, Inc., represented by Martha J. Kegal, its Executive Director (the "**Subrecipient**") to accomplish the Emergency Solutions Grants CARES Act project entitled, "ESG-CV, UNITY," Project Number ESG-CV07 (21), Budget Code 7227. The City and the Subrecipient are sometimes each referred to as a "**Party,**" and collectively referred to as the "**Parties.**" The Agreement shall be effective August 23, 2021 (the "**Effective Date**").

RECITALS

WHEREAS, the City of New Orleans has received approval for Emergency Solutions Grant Coronavirus Aid, Relief and Economic Security Act (CARES Act) Program from the U.S. Department of Housing and Urban Development (HUD). This agreement is made pursuant to the authority provided under the "Homeless Assistance Grants" heading of Title XII of Division B of the CARES Act (Public Law 116-136) and Subtitle B of Title IV of the McKinney-Vento

Homeless Assistance Act (42 U.S.C. 11371 et. seq.) Funds are to be used to prevent, prepare for, and respond to the coronavirus pandemic (COVID-19) among individuals and families who are homeless or receiving homeless assistance; and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts of COVID-19;

WHEREAS, the activities specified are eligible ESG activities as indicated in the federal regulations 24 CFR 576.102, as amended, for Shelter Operations, 24 CFR 576.104, as amended, for Rapid Re-Housing Services and 24 CFR 576.108, as amended for administrative costs;

WHEREAS, this project is considered an exempt activity as per Section 58 of the Environmental Review Procedure for Title I Emergency Solutions Grants Program effective April 25, 2012 under Title 24 Part 58 of the Code of Federal Regulations;

WHEREAS, the City desires to address the housing and supportive services needs of homeless individuals and families in Orleans parish;

WHEREAS, the Subrecipient has the expertise to provide such activities to homeless individuals and families in Orleans Parish;

WHEREAS, the City has agreed to provide funding for the services to be rendered.

NOW, THEREFORE, the City and Subrecipient, for the considerations and under the conditions set forth do hereby agree as follows:

ARTICLE I - SUBRECIPIENT'S OBLIGATIONS

A. ***The Subrecipient's Scope of Services are:***

1. Attend mandatory meetings sponsored by the Office of Community Development ("**OCD**") of the City and HUD.
2. Provide the services and activities specified in the **Contract Analysis Document and Project Description and Reporting Document** for ESG-CV projects, which is attached herein, marked as *Attachment I* and made part of this Agreement.

3. Provide leadership and coordination of the homeless population including but not limited to emergency events in the City.

4. The Contractor shall comply with HUD's standards for participation in a local Homeless Management Information System (HMIS) and the collection and reporting of client level information.

B. Location of Program Activities. The administrative office of this program is located at 2475 Canal Street, Suite 300, New Orleans, LA 70119.

C. Program Benefit.

1. ***Program Description.*** The Subrecipient shall provide services to homeless who are low-income or no-income as defined by the Emergency Solutions Grant and who reside in Orleans Parish.

2. ***Documentation Requirements.*** Documentation must also be kept on file to verify that participants are low-income as per the **Income Schedule** which is attached herein, marked as *Attachment II* and made part of this Agreement.

D. ***Key Personnel.*** The Subrecipient identifies the following key personnel to provide the services:

1. **Project Administration and Operations:**
   a. Martha J. Kegel, Jr., its Executive Director

2. **Change to Key Personnel:** The Subrecipient shall notify the City in writing of any change of the above listed "Key Personnel." The City retains the right to reject any such substitution within 30 days of receipt of written notice of substitution.

E. ***Compliance with ESG Regulations, ESG-CV Waivers, and HUD Notices.*** The Subrecipient, as well as any of its sub- Subrecipients, shall:

1. **In general.** Comply with the federal regulations published in Volume 24, Part 576, of the Code of Federal Regulations (Emergency Solutions Grants) (24 CFR 576), the waivers made available on March 31, 2020 for ESG, as well as all federal regulations and requirements incorporated therein by reference, whether specifically discussed herein or not.

2. **Uniform Administrative Requirements.** Comply with the applicable Uniform Administrative Requirements as described in 24 CFR 570.502.

3. Procurement. Comply with the procurement standards in 2 CFR §200.318 - §200.326 when procuring property and services under this Agreement.

4. Notices. Comply with all applicable Notices and directives promulgated by the U.S. Department of Housing and Urban Development.

F. ***Invoices.*** [Intentionally deleted.]

G. ***Remedies for Non-Compliance.*** If the Subrecipient fails to comply with federal statutes, regulations or the terms and conditions of a Federal award, the HUD or the City may impose additional conditions, as described in §200.207 Specific conditions. If HUD or the City determines that noncompliance cannot be remedied by imposing additional conditions, then either may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.

(b) 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.

(c) Wholly or partly suspend or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

ARTICLE II – THE CITY'S OBLIGATIONS

A. The City agrees to:

1. Provide funds for the program activities.
2. Process all payment requests.
3. Provide staff for technical assistance and programmatic support.

ARTICLE III - DURATION AND TERMINATION

A. *Term.* The term of this Agreement shall be for one year, starting on the Effective Date and expiring on August 22, 2022.

B. *Extension.* The City shall have the option to extend the term of this Agreement by giving written notification to the Subrecipient stating such intentions at least 30 days prior to the termination of the Agreement. Any such renewal shall be subject to the availability of funds, program performance, and compliance with local, state, and federal reporting requirements. Any annual ESG appropriation will be adjusted to correspond with the City's annual ESG allocation from HUD.

C. *Termination for Convenience.* The City may terminate this Agreement by giving the Subrecipient written notice to terminate at least 30 days before the date of termination, except as otherwise provided in Part II, General Terms and Conditions which is attached hereto and made a part of this Agreement.

D. *Termination for Cause.* The City may terminate this contract in whole or in part at any time if the Subrecipient fails to fulfill its obligation under this Agreement: Provided, the Subrecipient is given written notice stating the cause and effective date of termination at least 5 days before the effective date of termination. In such event, all finished or unfinished documents, data studies, and reports prepared by the Subrecipient under this Agreement shall, at the option of the City, become its property and the Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents. Notwithstanding the above, the Subrecipient shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the contract by the Subrecipient and the City may withhold any payments to the Subrecipient, for the purpose of setoff until such time as the exact amount of damages due the City from the Subrecipient is determined.

E. *Termination or Reduction Due to Lack of Funding.* It is further understood that funds provided for under the terms of this Agreement are subject to all regulations of HUD, and as such, the City reserves the right to terminate or reduce the funding level of this project if, for any reason whatsoever, the United States of America, HUD, or any related federal agency withdraws or reduces the funding level committed to the City under the ESG Grant Program.

ARTICLE IV - COMPENSATION

A. ***Grant Amount.*** The City agrees to pay the Subrecipient up to the maximum amount of **$3,000,000.00** for services provided in conjunction with this Agreement as per the attached **Budget & Cost Control Statements** which are attached herein, marked as *Attachment III-A, III-B,* and III-C and made part of this Agreement.

B. ***Budget Revisions.*** The Subrecipient is allowed a maximum of two budget revisions during the contract period. It is further expressly understood and agreed that in no event will the Subrecipient exceed any budget line item **prior** to receiving, in writing, a budget revision from the City authorizing the excess.

C. ***Monthly Submittal of Budget & Cost Control Statements.*** The Subrecipient agrees to provide OCD Neighborhood Services & Facilities, 1340 Poydras Street, 10th Floor, New Orleans, Louisiana on the 10th working day of each month, the original and one copy of the Budget and Cost Control Statement(s) without support documentation. Furthermore, the Subrecipient further agrees to scan these attachments along with support documentation and upload via the Budget, Requisition, and Accounting Services System (BRASS). This information will be provided to the City in accordance with **OCD Fiscal Unit Policies and Procedures**, marked as *Attachment IV*, which is attached hereto and made part of this Agreement.

D. ***Monthly Payments.*** Payment will be made monthly, based on receipt of the monthly Budget and Cost Control Statement that will be approved and signed by the fiscal monitor. The Subrecipient understands and acknowledges that the contract sum will be paid to the Subrecipient on a **cost-reimbursement basis** computed on actual or accrued expenditures. The Subrecipient further understands and agrees that the Subrecipient will only be entitled to the compensation upon satisfactory performance of the work of the contract as shall be determined by the City.

E. ***Payment Only for Eligible Activities.*** The Subrecipient understands and acknowledges that the funds provided shall be used exclusively for the purpose described above and shall not be used to cover any other expense of the Subrecipient. The Subrecipient shall be responsible for collecting and maintaining any and all source documents evidencing eligible and authorized expenditures as provided for in the budget for administrative cost. The Subrecipient will not be compensated for any ineligible or unsupported costs. Furthermore, the Subrecipient understands and agrees that claims such as, but not limited to, those which may result from the Subrecipient's failure to pay debts incurred by the Subrecipient are the exclusive responsibilities of the Subrecipient and not the City.

F. ***Uniform Administrative Requirements*.** The Subrecipient understands and agrees that all expenditures will be made in accordance with the Office of Management and Budget (OMB), 2 CFR Part 200 – "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," commonly referred to as Uniform Guidance and all other procedures related to the expenditures of the amount of compensation provided by this contract as may be imposed on the Subrecipient by the City or Federal government.

G. ***Amount of Compensation Subject to Funding Availability*.** The Subrecipient further understands that the amount of compensation specified in this Agreement is subject in whole or in part to the release of ESG funds to the City by HUD and/or appropriation of funds by the New Orleans City Council. Additionally, it is agreed to by the Subrecipient that the expressed maximum sum of compensation is subject to be modified by the City when deemed necessary by the City based on results of budgetary analysis.

H. ***Withholding Reimbursement to Settle Questioned or Ineligible Costs*.** Furthermore, it is expressly understood and agreed that the City may reserve, utilize and/or expend the amount of compensation toward the "supplemental" portion of any existing or to be acquired funds, and may also withhold reimbursement to the Subrecipient in order to settle any questioned or ineligible cost incurred by the Subrecipient in the operation or performance of any previous contracts involving the ESG/City funded program operated by the Subrecipient, which the City and/or HUD may deem ineligible or unallowable under said previous contract(s) provisions and/or rules and regulations applicable to the ESG program.

I. ***Payment*.** Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.

ARTICLE V - REPORTING REQUIREMENTS

A. ***Monthly Reporting Requirement*.** The Subrecipient agrees to provide OCD Neighborhood Services & Facilities, 1340 Poydras Street, 10th Floor, New Orleans, Louisiana on the 10th working day of each month, one copy of the information described and requested in the **Monthly Reporting**

Requirements, as may be amended, designated as *Attachment V*, which is attached hereto and made part of this Agreement. The Subrecipient further agrees to provide the OCD Fiscal Unit, 1340 Poydras Street, 10th Floor, New Orleans, Louisiana on the 10th working day of each month, one original Monthly Reporting Requirement.

ARTICLE VI – COMPLIANCE AND FINANCIAL MANAGEMENT TERMS AND CONDITIONS

The Subrecipient agrees to comply with the provisions in the documents entitled "**Part II, the General Terms and Conditions**," marked as *Attachment VII*, and "**Part III, Terms and Conditions, Accounting and Financial Management Procedures**," marked as *Attachment VIII*, which are attached hereto and made part of this Agreement.

ARTICLE VII - STATEMENT OF ELIGIBILITY

Attached is a **Statement of Eligibility** for this project which is attached herein, marked as *Attachment IX*, and made part of this Agreement.

ARTICLE VIII - PROGRAM INCOME

A. ***Funds Collected to be Considered Program Income*.** **If applicable,** the pro-rata share of funds obtained from fees collected for services rendered and any other funds collected in accordance with the services of this project are determined to be program income. All funds derived from the program as a result of the activities carried out by the Subrecipient, shall be considered program income and shall be retained by the Subrecipient for **eligible** program activities.

B. ***Program Income Reporting*.** Funds considered program income shall be reported on the **Program Income Form**, as may be amended, which is attached herein, marked as *Attachment X*, and made part of this Agreement. The form shall be provided to OCD Neighborhood Services & Facilities 1340 Poydras Street, 10th Floor, New Orleans, Louisiana on the tenth (10th) working day of each month. Should the Subrecipient not obtain any program income funds, the form must be signed and submitted on the tenth (10th) working day of the month indicating no funds were obtained. The report shall indicate the total amount of funds collected for the month and the City's portion to date.

C. ***Projected Budget Required.*** The Subrecipient understands that if the amount of program income to be received has not been determined or the Subrecipient does not know how the program income will be used, the Subrecipient agrees that upon learning that it will receive program income it will provide **a projected budget** to the City for prior approval of its intended use. Such budget shall be a projection of the income to be collected during the term of this Agreement.

D. ***Program Income to be Maintained Separately.*** All program income shall be placed in an interest bearing account and shall be deposited as per **Section 14 - Insurance on Deposit, Part III, Terms and Conditions** of this Agreement. All program income shall be maintained separately and expended first by the Subrecipient before reimbursement funds are requested from the City, except for an amount as determined by the City to be necessary to maintain the bank account. Once program income has been expended, additional funds may be requested from the City to cover the reimbursable cost for the month. Program income on hand at the time this Agreement expires shall continue to be subject to the eligibility requirements and provisions of this Agreement until expended or returned to the City.

ARTICLE IX- MAINTENANCE AND MONITORING OF RECORDS

A. ***Maintenance of Records.*** The Subrecipient agrees to maintain all records of all expenditures of ESG funds provided to it by the City in accordance with §574 for five years from the official date of the closeout of the grant. Records are to be maintained separately for each project undertaken by the Subrecipient, and the records for each project will be maintained by the Subrecipient in such a manner so that the funding sources used in each project will be accounted for separately. The aforementioned classification of funds expended will be further itemized by the "funding year" associated with the funds. The Subrecipient hereby agrees to maintain, for the City's review, all records relating to the creation, development and set-up of ESG projects, and the expenditure of ESG funds, itemized for each ESG-funded project undertaken.

B. ***Monitoring of Records.*** The Subrecipient acknowledges the responsibility of the City to monitor its performance and all records relating to projects implemented by the Subrecipient with ESG funds. The Subrecipient hereby acknowledges its responsibility to provide the City, upon reasonable demand, with all records relating to ESG-funded projects implemented by the Subrecipient, and hereby agrees to assist the City in reviewing projects undertaken by Subrecipient with ESG funds. The aforementioned records will be made available at times reasonable to both the Subrecipient and the City, and the Subrecipient's records will be reviewed by the City no less than annually.

ARTICLE X - COMPLIANCE REPORTING REQUIREMENTS

The Subrecipient agrees to provide to OCD information described and requested in the document entitled "**Compliance Reports Submission**," which is attached herein, marked as *Attachment XI,* and made a part of this Agreement.

ARTICLE XI – HUD COMPLIANCE PROVISIONS

The Subrecipient agrees to comply with the document entitled "**HUD Compliance Provisions for Subrecipient Agreements and Professional Services Contracts**," which is attached herein, marked as *Attachment XII,* and made a part of this Agreement.

ARTICLE XII - AUDIT COMPLIANCE

A. ***Organizations Expending at least $750,000.*** Organizations that expend $750,000 or more of federal funds in the organization's fiscal year are required to conduct an organizational wide audit in accordance with 2 CFR 200.501. The City shall, at the request of the Subrecipient, reimburse the Subrecipient for its eligible portion of the audit cost, provided the Subrecipient satisfies the audit requirements of the City.

B. ***Organizations Expending under $750,000.*** Organizations who expend less than $750,000 in federal funds are required to have an audit performed on those funds provided through the City of New Orleans at the discretion of the City. The City may in this case, engage an audit firm to perform the audit on the awarded grant(s) and may pay the audit firm for the cost of services rendered.

ARTICLE XIII - NON-DISCRIMINATION

A. ***Equal Employment Opportunity.*** In all hiring or employment made possible by, or resulting from this Agreement, the Subrecipient (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, sex gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Subrecipient's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. ***Non-Discrimination.*** In the performance of this Agreement, the Subrecipient will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Subrecipient in any of Subrecipient's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Subrecipient. The Subrecipient agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. ***Incorporation into Subcontracts.*** The Subrecipient will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub-Subrecipients to comply with those provisions.

D. ***Termination of Agreement.*** The City may terminate this Agreement for cause if the Subrecipient fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE XIV - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

The Subrecipient certifies neither that he/she nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or Agency. Further, the Subrecipient agrees to comply with the provisions of Federal Executive Orders 12549 and 12689 regarding debarment and suspension.

ARTICLE XV- ANTI-LOBBYING

The Subrecipient certifies, to the best of his or her knowledge and belief, that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Further the Subrecipient agrees to comply with the provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

ARTICLE XVI - CLEAN AIR AND WATER ACTS

Where applicable, the Subrecipient will comply with all the requirements of the Clean Air Act (42 U.S.C. 7401) and Federal Water Pollution Control Act (33 U.S.C. 1251) certifying that no facility to be utilized in the performance of the contract is listed on the List of Violating Facilities issued by the Environmental Protection Agency. The Subrecipient will promptly notify the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

ARTICLE XVII - DRUG-FREE WORKPLACE ACT

The Subrecipient agrees to comply with the provisions of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and certifies that it will provide a drug-free workplace. The Subrecipient further certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

ARTICLE XVIII - FAIR HOUSING ACT

The Subrecipient certifies that it will affirmatively further fair housing by analyzing and eliminating housing discrimination in its programs by promoting fair housing that is accessible to and usable by persons with disabilities and fostering compliance with the nondiscrimination provisions of the Fair Housing Act (42 U.S.C. 3601).

ARTICLE XIX - INDEMNITY

A. ***In general***. To the fullest extent permitted by law, the Subrecipient will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Subrecipient, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Subrecipient in connection with the performance of work under this Agreement and for any and all claims and/or liens for labor, services, or materials furnished to the Subrecipient in connection with the performance of work under this Agreement

B. ***Limitation***. The Subrecipient 's indemnity does not extend to any loss arising from the negligence or willful misconduct of any of the Indemnified Parties, provided that neither Subrecipient nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. ***Independent Duty***. The Subrecipient has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Subrecipient is ultimately absolved from liability.

D. ***Expenses***. Notwithstanding any provision to the contrary, the Subrecipient shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE XX - INSURANCE

The Subrecipient shall carry coverage at least as broad as the following:

A. ***Types of Insurance***:

1. Commercial General Liability (CGL): Insurance Services Office Form, covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: ISO Form Number CA 00 01 or similar acceptable to the City covering any auto (Symbol 21, or Symbols 27, 28, 29), or if Subrecipient has no owned autos, hired, (Code 28) and non-owned autos (Code 29), with limit no less than **$1,000,000 Combined Single Limit** per accident for bodily injury and property damage.

3. Cyber Liability: Minimum limits of $1,000,000 for third party losses including, but not limited to: Data Privacy and Network Security Liability, Internet and Communications Liability, Professional Services Liability, Programming Errors & Omissions Liability, Replacement or Restoration of Electronic Data, Crisis Management Expense, Notification Expense, Data Privacy Regulatory Expense, Credit Monitoring Expense, Cyber Investigation Expense, and Security Breach Expense.

4. Workers' Compensation: as required by the State of Louisiana, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.

B. *Other Insurance Provisions:*

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. ***Additional Insured Status***

Subrecipient will provide, and maintain current, a Certificate of Insurance naming

The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Subrecipient's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used) . The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.

2. *Primary Coverage*

For any claims related to this contract, **Subrecipient's insurance coverage shall be primary**

insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non- contributing to Subrecipient's coverage.

3. Claims Made Policies

a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.

b. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Subrecipient must purchase "extended reporting" coverage for minimum of five (5) years after the termination of this agreement.

4. Waiver of Subrogation

Subrecipient and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.

5. Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except with prior notice to the City of no less than 30 days.**

6. Acceptability of Insurers

Insurance is to be placed with **insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII**, unless otherwise acceptable to the City.

ARTICLE XXI – LIVING WAGE

1. ***Definitions.*** Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

2. ***Compliance.*** To the fullest extent permitted by law, the Subrecipient agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

- **a.** Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("**Living Wage**");
- **b.** Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
- **c.** Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

3. ***Living Wage.*** In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. $11.19 per hour for any work performed on or before December 31, 2021;
2. $13.25 per hour for any work performed on or before December 31, 2022;
3. $15.00 per hour for any work performed on or before December 31, 2023; and
4. $15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. ***Adjusted Living Wage.*** In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

E. ***Sub-Subrecipient Requirements.*** As required by Section 70-804 of the City Code, the Subrecipient, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify sub-subrecipients in writing of the requirements and applicability of Article VIII – The

Living Wage Ordinance ("**Article**"). City subrecipients and beneficiaries shall be deemed responsible for violations of this Article by their sub-subrecipients.

F. ***Reporting.*** On or before January 31st and upon request by the City, the Subrecipient shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

G. ***Compliance Monitoring.*** Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the "**OWD**") and/or the Chief Administrative Office ("**CAO**"). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Subrecipient will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Subrecipient agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Subrecipient, payroll records and employee paychecks; and (ii) that the City may audit such records of the Subrecipient as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. ***Remedies***. If the Subrecipient fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

ARTICLE XXII – INCORPORATED DOCUMENTS

A. ***In general.*** The following documents are incorporated into this Agreement:

1) Contract Analysis Document and Project Description and Budget Forms for Emergency Solutions Grant CARES Act Program -- Attachment I

2) Income Schedule -- Attachment II

3) Budget & Cost Control Statements -- Attachment III

4) OCD Fiscal Unit Policies and Procedures -- Attachment IV

5) Monthly Reporting Requirements -- Attachment V
6) ESG Project Performance Information Report – Attachment VI

7) Part II, the General Terms and Conditions -- Attachment VII
8) Part III, Terms and Conditions, Accounting and Financial Management Procedures -- Attachment VIII

9) Statement of Eligibility – Attachment IX

10) Program Income Form -- Attachment X
11) Compliance Reports Submission -- Attachment XI

12) HUD Compliance Provisions for Subrecipient Agreements and Professional Services Contracts – Attachment XII

B. ***Direct Conflict***. If any Attachment directly conflicts, in whole or in part, with this Agreement, the terms and conditions of the Attachment will control except as provided by law.

C. ***Difference in Standard.*** If any Attachment differs, in whole or in part, with this Agreement in terms of requirements, standards, timelines, etc., then the more stringent requirement, the higher standard, and the longer timeline, etc., shall prevail, unless the Parties mutually agree otherwise.

ARTICLE XXIII – FORCE MAJEURE

A. ***Event.*** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. ***Notice.*** To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. ***Effect.***

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.

2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE XXIV - NOTICE

A. ***In General***. Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Office of Community Development
1340 Poydras Street, Suite 100
New Orleans, LA 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To the Subrecipient:
Martha J. Kegel
UNITY of Greater New Orleans

2475 Canal Street, Suite 300
New Orleans, LA 70119

B. ***Effectiveness***. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. ***Notification of Change***. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address (es) set forth above.

ARTICLE XXV - ADDITIONAL PROVISIONS

A. ***Amendment*****.** No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. ***Assignment*****.** This Agreement and any part of the Subrecipient's interest in it are not assignable or transferable without the City's prior written consent. However, that claims for money due or to become due the Subrecipient from the City under this Agreement may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

C. ***Audit and Other Oversight*****.** The Subrecipient will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires the Subrecipient to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests is a material breach of the Agreement. In signing this Agreement, the Subrecipient agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

D. ***Choice of Law*****.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

E. ***Construction of Agreement*****.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Subrecipient on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

F. ***Convicted Felon Statement.*** The Subrecipient complies with City Code § 2-8(c) and no principal, member, or officer of the Subrecipient has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

G. ***Cost Recovery***. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

H. ***Employee Verification.*** The Subrecipient swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all sub- Subrecipients to submit to the Subrecipient a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination and may further result in the Subrecipient being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Subrecipient further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Subrecipient will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Subrecipient fails to provide such the requested affidavit or violates any provision of this paragraph.

I. ***Entire Agreement*.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the Parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

J. ***Jurisdiction*.** The Subrecipient consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Subrecipient.

K. ***Limitations of the City's Obligations*.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

L. ***No Third-Party Beneficiaries*.** This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

M. ***Non-Solicitation Statement*.** The Subrecipient has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Subrecipient has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

N. ***Non-Waiver*.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

O. ***Ownership Interest Disclosure*.** The Subrecipient will provide the City with a sworn affidavit listing all natural or artificial persons with an ownership interest in the Subrecipient and stating that no other person holds an ownership interest in the Subrecipient via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Subrecipient fails to submit the required affidavit, the City may, after 30 days' written notice to the Subrecipient, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

P. ***Ownership of Records.*** Upon final payment, all data collected and all products of work prepared, created or modified by the Subrecipient in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Subrecipient's personnel and administrative records and any tools, systems, and information used by the Subrecipient to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Subrecipient's consent and for no additional consideration to the Subrecipient.

Q. ***Prohibition of Financial Interest in Agreement.*** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the Subrecipient, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Subrecipient pursuant to this Agreement without regard to the Subrecipient's otherwise satisfactory performance of the Agreement.

R. ***Prohibition on Political Activity.*** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

S. ***Remedies Cumulative.*** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

T. ***Severability*.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

U. ***Sub- Subrecipient Reporting*.** The Subrecipient will provide a list of all natural or artificial persons who are retained by the Subrecipient at the time of the Agreement's execution and who are expected to perform work as sub- Subrecipient in connection with the Subrecipient's work for the City. For any sub- Subrecipient proposed to be retained by the Subrecipient to perform work on the Agreement with the City, the Subrecipient must provide notice to the City within 30 days of retaining that sub- Subrecipient. If the Subrecipient fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Subrecipient, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

V. ***Survival of Certain Provisions*.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

W. ***Terms Binding*.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

X. ***311 Integration*.** The Subrecipient will provide work progress updates and other information as required by the City through the City's designated customer service system ("**NOLA 311**") within 48 hours of any event. The Subrecipient is responsible for ensuring that it has the capabilities to use NOLA 311 as required by this paragraph and will not be entitled to any additional compensation for the performance of these requirements.

Y. ***Assistance to Those with Limited English Proficiency*.** The Subrecipient agrees to take all reasonable actions to communicate with persons who have Limited English Proficiency (LEP) to ensure that such persons have meaningful access and an equal opportunity to participate in the program(s) and/or services funded under this Agreement.

ARTICLE XXVI - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

[SIGNATURES CONTAINED ON NEXT PAGE]

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto, through duly authorized representatives, have executed this Agreement to be effective as of the Effective Date.

CITY OF NEW ORLEANS

BY: ______________________________

LATOYA CANTRELL, MAYOR

Executed on this 20th **of** May**, 2022**

FORM AND LEGALITY APPROVED:

Law Department

By: ______________________________

Printed Name: Tracy Tyler

UNITY OF GREATER NEW ORLEANS

BY: ______________________________

MARTHA J. KEGEL, EXECUTIVE DIRECTOR

____

FEDERAL TAX I.D. NO.