

K23-820

**SUBRECIPIENT AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
TOTAL COMMUNITY ACTION
FOR
ELECTRIC AND GAS ARREARAGES ASSISTANCE PROGRAM**

THIS SUBRECIPIENT AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Total Community Action, represented by Thelma French, President & Chief Executive Officer (the “**Subrecipient**”). The City and the Subrecipient may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**.” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, the City is a political subdivision of the State of Louisiana;

WHEREAS, the Subrecipient is a non-profit corporation whose mission is to o reduce poverty in our community through collaboration with other agencies and by providing human services, experiences and opportunities that assist individuals with low-income to achieve economic security and whose principal address is located at 1420 S. Norman C. Francis Parkway, New Orleans, La. 70125;

WHEREAS, the City was awarded \$387,523,049.00 in American Rescue Plan funds (“**ARP program**”) made available by the American Rescue Plan Act, 2021 (Public Law 117-2, signed March 11, 2021) distributed by the U.S. Treasury (“**Treasury**”);

WHEREAS, the Subrecipient, by agreeing to undertake the implementation of this Agreement utilizing ARP funds provided by Treasury, will be acting as a Subrecipient of the City as defined by 2 C.F.R. part 200.93, and hereby agrees to carry out this Agreement in full compliance with the laws and regulations of the State and Local Fiscal Recover Funds (“**SLFRF**”) program and exhibits incorporated to this Agreement;

WHEREAS, the activities hereunder are eligible under the SLFRF program;

WHEREAS, the City and the Subrecipient desire to accomplish the valuable public purpose of addressing economic hardship related to the COVID-19 pandemic;

WHEREAS, the City and Subrecipient desire to provide assistance to constituents with utility arrearages incurred during the COVID-19 pandemic; and

WHEREAS, the City will provide the Subrecipient with grant funding in exchange for the aforementioned services;

NOW THEREFORE, the City and the Subrecipient each having the authority to do so, agree as follows:

ARTICLE I – GENERAL AWARD INFORMATION

The subaward from the City to the Subrecipient, which is described below, is for the purpose of carrying out a portion of a Federal award described in Article II of this agreement, and creates a Federal assistance relationship with the Subrecipient. This Agreement must be updated to reflect any changes to the federal award and the following award information.

Federal Award Identification Number (FAIN): SLT-1835 and SLT-7352

CFDA Number and Name: 21.019

Federal award project description: American Rescue Plan Act Federal Recovery Funding

Is this award for research and development? No

Amount of Federal funds obligated by this agreement: \$3,200,000.00

Contact information:

Grantee:

City of New Orleans
LaToya Cantrell, Mayor
Address: 1300 Perdido Street,
New Orleans, LA 70112

Subrecipient:

Total Community Action
Thelma French, President & CEO
Address: 1420 S. Norman C. Francis
Parkway, New Orleans, La. 70125

ARTICLE II – SUBRECIPIENT'S OBLIGATIONS

A. Statement of Work. The Subrecipient shall:

1. Planning.

- a. Provide a description of the program to the City, including:
 - i. Selection Criteria – identify any proposed selection, evaluation, or disqualifying criteria.
 - ii. Budget – total program budget including the pending applications that meet the selection criteria, projected number of recipients based on the historic average assistance amount, any award cap and the basis for setting the cap amount, and anticipated administrative costs.
 - iii. Timeline – a chronology detailing the amount of time the Subrecipient will need to assist all eligible applicants and/or expend the program funds.
- b. The program description is subject to the approval of the Council Utilities Regulatory Office (“CURO”).
- c. The program description should be submitted to CURO no later than 14 days after the Effective Date.
- d. After the program description is approved, TCA will be eligible for a payment in the amount of the award amount for any eligible applications.

2. **Implementation.** The Subrecipient shall implement and administer the electric and gas utility arrearage assistance program in accordance with the program approved by CURO and as follows:

- a. The award recipients under the program should have arrears incurred due to economic hardship experienced as a result of the COVID-19 pandemic.
- b. The program administration shall comply with applicable federal regulations related to ARP funds.
- c. Submit monthly reports listing the recipients, the amount received, and any administrative costs.
- d. Submit a final report, including an anonymized list of all recipients, the amount received by each, an explanation for any discrepancy with previously submitted report, when the funds described in Article III are exhausted.

B. **Compliance with Laws.** The Subrecipient, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws, regulations, and ordinances.

C. **Compliance with Federal Regulations, Notices, and Uniform Administrative Requirements.** The Subrecipient, as well as any of its sub-Sub-recipients, shall:

1. **In general.** Comply with all applicable federal regulations and requirements incorporated therein by reference, whether specifically discussed herein or not, including but not limited to the authorizing statute and the final rule, as they may be amended.

2. **Uniform Administrative Requirements.** Comply with the applicable Uniform Administrative Requirements as described in 2 CFR 200.

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 Department.

5. **Award Terms and Conditions.** Comply with all terms and conditions required by the Award.

D. **Invoices.**

1. The Subrecipient must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via the City of New Orleans supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. Each invoice must include, at a minimum, the following information:

- a. Name of Subrecipient;
- b. Date of Invoice;
- c. Invoice Number;
- d. Contract or BRASS Number issued by the City (i.e. K#);
- e. Name of the City Department to be invoiced (e.g. CURO);
- f. Description of the Services completed;

2. Invoices will be processed in accordance with Article V of the Agreement.

3. All invoices must be signed by an authorized representative of the Subrecipient under penalty of perjury attesting to the validity and accuracy of the invoice.

4. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

ARTICLE III - REPRESENTATIONS AND WARRANTIES

A. The Subrecipient represents and warrants to the City that:

1. The Subrecipient, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;

2. The Subrecipient has and will maintain the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

3. The Subrecipient is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Subrecipient, its employees, or its sub-subrecipients in the performance of this Agreement;

4. The Subrecipient is not under any obligation to any other person that is inconsistent or in conflict with this Agreement, or that could prevent, limit, or impair the Subrecipient's performance of this Agreement;

5. The Subrecipient has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;

6. The Subrecipient is not in breach of any federal, state, or local statute, regulation, or code applicable to the Subrecipient or its operations;

7. Any rate of compensation charged for the performance of services under this Agreement are no higher than those charged to the Subrecipient's most favored customer for the same or substantially similar services;

8. The Subrecipient has read and fully understands this Agreement, and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of execution of this Agreement by the Subrecipient, and the execution of this Agreement by the Subrecipient's representative constitutes a sworn statement, under penalty of perjury, by the Subrecipient as to the truth of the foregoing representations and warranties.

ARTICLE IV - THE CITY'S OBLIGATIONS

A. **Administration.** The City will administer this Agreement through the Council Utilities Regulatory Office ("CURO").

B. **Access to Information.** The City shall provide the Subrecipient with all material and information reasonably necessary to allow the Subrecipient to perform its obligations under this Agreement.

C. **Funding.** The City shall provide funding related to the costs associated with the electric and gas utility assistance program as set forth herein.

ARTICLE V - COMPENSATION

A. Maximum Amount Payable. The amount TCA is authorized to fund the program is \$3.2 million. Services described in Article II are restricted to those Services that may be accomplished within the maximum funding level of \$3.2 million.

B. Other Costs. The Subrecipient understands and agrees that the compensation shall be inclusive of all personnel costs, fringe benefits, equipment costs, travel costs, supply costs, and indirect costs identified as those not directly incurred as a result of providing the services listed in this Agreement and deemed ineligible for federal modified total direct costs for on-campus research.

C. Payment. Unless otherwise agreed by the City, payment terms are NET 30 days provided the 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 VI - DURATION AND TERMINATION

A. Term. The term of this Agreement shall be for one year from the Effective Date.

B. Extensions. 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 thirty calendar days prior to the termination of the Agreement. The term of the Agreement must be extended if the Subrecipient is in control of any ARP funding.

C. Termination for Convenience. The City may terminate this Agreement at any time during the term of the Agreement by giving the Subrecipient written notice of the termination at least 30 calendar days before the intended date of termination.

D. Termination for Cause. The City may terminate this Agreement immediately for cause by sending written notice to the Subrecipient. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

E. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

F. Notice. The City shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect. Upon termination, the City retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient shall return to the City any improper expenditures no later than thirty (30) days after the date of termination. The City may, at its sole discretion, allow Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of this agreement, 2 CFR Part 200, Subpart E, Cost Principles, and any other applicable state or Federal statutes, regulations or requirements.

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 CURO or the City may impose additional conditions, as described in 200.208 Specific conditions. If the CURO 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:

1. 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.
2. 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.
3. Wholly or partly suspend or terminate the Federal award.
4. 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).
5. Withhold further Federal awards for the project or program.
6. Take other remedies that may be legally available.

ARTICLE VII - MAINTENANCE AND MONITORING OF RECORDS

A. Maintenance of Records. The Subrecipient agrees to maintain all records of all expenditures of funds provided to it by the City for **five years** from the official date of the closeout of the grant. If any litigation, claims, or audits begin prior to the expiration of the three-year period, then the records must be maintained until all litigation, claims, and audit findings involving the records have been resolved and final action taken. Records are to be maintained separately for each project undertaken by the Subrecipient. 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 CDBG projects, and the expenditure of CDBG funds, itemized for each CDBG-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 CDBG funds. The Subrecipient hereby acknowledges its responsibility to provide the City, upon reasonable demand, with all records relating to CDBG-funded projects implemented by the Subrecipient, and hereby agrees to assist the City in reviewing projects undertaken by the Subrecipient with CDBG 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 VIII - MONITORING OF SUBRECIPIENT PERFORMANCE

A. Monitoring. The City shall monitor the performance of the Subrecipient as necessary and in accordance with regulations on Subrecipient Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure Subrecipient compliance with all of the requirements of this Agreement,

including the timeframes and performance goals associated with the activities, as well as procurement. Substandard performance as determined by the Grantee will constitute noncompliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within 14 days after being notified by the Grantee, the Grantee may impose additional conditions on the Subrecipient and its use of funds consistent with 2 CFR 200.207, suspend or terminate this agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR 200.338.

B. Reporting. The Subrecipient shall submit regular monthly progress and financial reports to the City. Such reports shall include an anonymized list of customers assisted and the amount provided to each during the reporting period as well as any other costs incurred during the reporting period. For each report submitted subsequent to the first monthly report, the Subrecipient should also include an accounting of the total amount of program funds expended and the amount of program funds remaining. When either all program funds are expended and/or all eligible customers have received assistance, the Subrecipient shall provide a final report which included an anonymized list of customers who received assistance, the amount of funds awarded to each, an accounting of any other costs associated with the program.

C. Failure to Perform or Breach. If the Subrecipient: 1) fails to perform according to the Agreement, 2) breaches the Agreement, or 3) does not comply with Federal Regulations governing the project, the City will notify the Subrecipient. If there is a continued lack of performance or lack of curing of breach or non-compliance after notification and a reasonable time period to cure (as determined by the City in the given instance), then the City may declare the Subrecipient in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting Subrecipient for any increase in costs and other damages sustained by the City. Furthermore, the Subrecipient acknowledges its obligation to repay the City the funds that are identified with the period of noncompliance. The Subrecipient acknowledges that the amount of repayment are not necessarily commensurate with the period of non-compliance, and amount repayment could be up to the total amount of compensation disbursed.

ARTICLE IX - 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, gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the 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 X - INSURANCE

Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Subrecipient will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided at the Council's request prior to the start of any activities/work, in conjunction with the Subrecipient's scope of work under the Agreement.

A. Minimum Requirements.

1. Workers' Compensation & Employers Liability Insurance in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.
2. Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
3. Automobile Liability Insurance with a combined single limit of liability of not less than \$500,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
4. Professional (Errors & Omission) Liability - As professional services are required under the contract, insurance appropriate to the Subrecipient's profession, to include but not limited to armed security guard services, with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Subrecipient in this agreement.
5. Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Subrecipient must procure and evidence full extended reporting period (ERP) coverage.
6. The Subrecipient shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage.
7. Important: The obligations for the Subrecipient to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Subrecipient from any liability incurred as a result of their activities/operations in conjunction with the Subrecipient's obligations and/or Scope of Work.

B. Additional Insured Status.

1. The Subrecipient and all Subcontractors (where applicable) 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 insurance coverage can be provided in the form of an endorsement to the Subrecipient 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).

2. Subrecipient shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Sub-contractor liability shall be covered by the Subrecipient. 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 (User Department Mailing Address), with a copy forwarded to Risk Management Division, 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.
 3. The Additional Insured box shall be marked "Y" for Commercial General Liability coverage. The Subrogation Waiver Box must be marked "Y" for Workers Compensation/Employers Liability and Property.
- C. **Primary Coverage.** For any claims related to this agreement, the 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 the Subrecipient's coverage.
- D. **Claims Made Policies.** If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. 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 3 years after the termination of this agreement.
- E. **Waiver of Subrogation.** The 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 agreement.
- F. **Notice of Cancellation.** Each insurance policy required above shall not be canceled, expire, or altered except without prior notice to the City of no less than 30 days.
- G. **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 Council.
- H. **Notice.** The Subrecipient will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.: CEA) the following documents, within 10 business days of the City's reasonable request:
1. Copies of all policies of insurance, including all policies, forms, and endorsements
 2. Substitute insurance coverage acceptable to the Council within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement.

- I. **Special Risks or Circumstances.** The Council shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

ARTICLE XI – LIVING WAGES

A. **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.

B. **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:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“Living Wage”);
2. 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
3. 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.

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

1. \$15.00 per hour for any work performed on or before December 31, 2023; and
2. \$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 XI – 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 XII - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM

A. In General. The Subrecipient agrees to abide by the City Code Sections 70-456, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

B. Monitoring. To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Subrecipient's use of DBE sub-subrecipients ("**DBE Entities**") through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all sub-subrecipients;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Subrecipient or DBE Entities.

C. Cooperation. The Subrecipient shall:

1. Designate an individual as the "DBE Liaison" who will monitor the Subrecipient's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Subrecipient shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Subrecipient.
 - b. The Subrecipient shall agree to promptly pay sub-subrecipients, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
 - a. Copies of written contracts with DBE Entities and purchase orders;

- b. Documentation of payments and other transactions with DBE Entities;
- c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Subrecipient does not use in accordance with the approved DBE participation submission;
- d. Any other records required by the OSD.

The Subrecipient is required to maintain such records for 5 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

- 4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.
 - a. The Subrecipient shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Subrecipient. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.
 - b. Reports are required even when no activity has occurred in a monthly period.
 - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 - d. The Subrecipient may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee, and amount of transfer to verify payment information as indicated on the form.
- 5. Conform to the established percentage as approved by the OSD.
 - a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
 - b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
 - c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. **Post-Award Modification.** The OSD may grant a post-award modification request if:

- a. for a reason beyond the Subrecipient's control, the Subrecipient is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Subrecipient must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Subrecipient shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE

Entities prior to awarding the Agreement will also apply to the substitution of DBE sub-subrecipients during the performance of the Agreement; or

- b. the Subrecipient reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Subrecipient shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

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 the 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 for Breach.** 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 - INDEPENDENT ENTITY

A. **Independent Entity Status.** The Subrecipient is an independent entity and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, sub-Subrecipients or agents to be an employee, partner, or agent of the City.

B. **Exclusion of Worker's Compensation Coverage.** The City will not be liable to the

Subrecipient, as an independent entity as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Subrecipient will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Subrecipient, as an independent entity, is being selected by the City under this Agreement for hire and defined in La. R.S. 23:1472(12)(E) and neither the Subrecipient nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Subrecipient has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Subrecipient are outside the normal course and scope of the City's usual business; and (c) the Subrecipient has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Subrecipient, as an independent entity, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE XV – 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 XVI - 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:**

Council Utilities Regulatory Office
1300 Perdido Street, STE 6E07
New Orleans, LA 70112
&

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

2. **To the Subrecipient:**

Total Community Action
Thelma French
1420 S. Norman C. Francis Parkway
New Orleans, LA 70125

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 XVII – INCORPORATED DOCUMENTS

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

1. Compliance Provisions for Agreements with Subrecipients Using ARP Funds, Exhibit "A".

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

C. **Difference in Standard.** If any Exhibit 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 XVIII - 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.

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, 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. **Compliance with City's Hiring Requirements - Ban the Box.**

1. The Subrecipient agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Subrecipient must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.
2. Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Subrecipient notice of noncompliance and allow the Subrecipient 30 days to come into compliance. If, after providing notice and 30 days to cure, the Subrecipient remains noncompliant, the City may move to suspend payments to the Subrecipient, void the Agreement, or take any such legal action permitted by law or this Agreement.
3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect.
4. 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.

- F. **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.
- G. **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.
- H. **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 Subrecipient shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Subrecipient fails to meet its contractual obligations.
- I. **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-Exclusivity.** This Agreement is non-exclusive and the Subrecipient may provide services to other clients. The City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.
- N. **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.
- O. **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.
- P. **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.

- Q. **Ownership of Records.** The Subrecipient shall maintain ownership of 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"). The Subrecipient shall also maintain 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 Subrecipient's name. However, the Subrecipient acknowledges that the purpose of the Project is for the benefit of the City of New Orleans, and therefore the Subrecipient shall grant the City a no-cost perpetual license to utilize all Work Product in a manner to further the purpose of the Project, provided that the City takes all reasonable precautions to protect the Subrecipient's intellectual property and proprietary interests of the the Subrecipient, subject to all applicable public records laws. The Subrecipient shall also be able present or publish materials deriving from its Work Product at its sole discretion, provided that the Subrecipient provide the City with an advance copy for review and feedback at least seven (7) days prior to presentation or publication.
- R. **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.
- S. **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.
- T. **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.
- U. **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.
- V. **Special Conditions for Agreements with Subrecipients Using ARP Funds.** The "Compliance Provisions for Direct Grantee – Agreements with Subrecipients from Non-HUD Federal Grants," is attached as Exhibit "A" to this Agreement and expressly

incorporated in the Agreement.

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

ARTICLE XIX - ELECTRONIC SIGNATURE AND DELIVERY

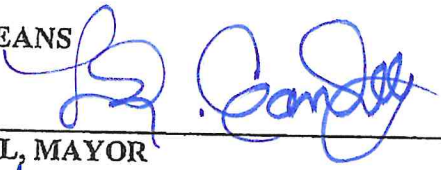
The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to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

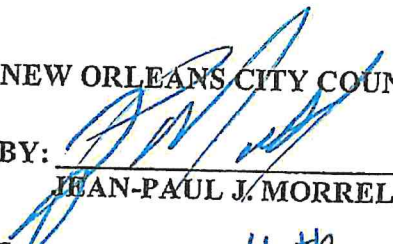
IN WITNESS WHEREOF, the City and the Subrecipient, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 29th of August, 2023

NEW ORLEANS CITY COUNCIL

BY: 
JEAN-PAUL J. MORRELL, PRESIDENT-CITY COUNCIL

Executed on this 16th of May, 2023

FORM AND LEGALITY APPROVED:
Law Department

By: 
Printed Name: Tracy Hyle

TOTAL COMMUNITY ACTION

BY: _____
THELMA FRENCH, PRESIDENT & CEO

FEDERAL TAX I.D.

[EXHIBIT "A" ATTACHED SEPERATELY]

IN WITNESS WHEREOF, the City and the Subrecipient, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: _____
LATOYA CANTRELL, MAYOR

Executed on this _____ day of _____, 2023

NEW ORLEANS CITY COUNCIL

BY: _____
JEAN-PAUL J. MORRELL, PRESIDENT-CITY COUNCIL

Executed on this _____ day of _____, 2023

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

TOTAL COMMUNITY ACTION

BY:  _____
THELMA FRENCH, PRESIDENT & CEO


FEDERAL TAX I.D.

[EXHIBIT "A" ATTACHED SEPERATELY]

EXHIBIT A
COMPLIANCE PROVISIONS FOR AGREEMENTS WITH SUBRECIPIENTS
USING ARP FUNDS

[COVER PAGE]

FEDERAL COMPLIANCE PROVISIONS

From 2 CFR 200

Applies to all federal grants.

- 1. REMEDIES FOR NON-COMPLIANCE**
- 2. TERMINATION FOR CAUSE AND TERMINATION FOR CONVENIENCE**
- 3. EQUAL OPPORTUNITY ACT**
- 4. EQUAL OPPORTUNITY ACT FOR FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS**
- 5. DAVIS-BACON ACT**
- 6. LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION**
- 7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**
- 8. COPELAND "ANTI-KICKBACK" ACT**
- 9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**
- 10. CLEAR AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**
- 11. DEBARMENT AND SUSPENSION**
- 12. BYRD ANTI-LOBBYING ACT**
- 13. PROCUREMENT OF RECOVERED MATERIALS**
- 14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SERVEILLANCE SERVICES OR EQUIPMENT**
- 15. DOMESTIC PREFERENCES FOR PROCUREMENT**
- 16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**
- 17. ACCESS TO RECORDS**
- 18. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**
- 19. NO OBLIGATION BY FEDERAL GOVERNMENT**
- 20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

1. REMEDIES FOR NON-COMPLIANCE

If the Subrecipient fails to comply with federal statutes, regulations or the terms and conditions of a Federal award, the Department or the City may impose additional conditions, as described in 200.208 Specific conditions. If the Department 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.

2. TERMINATION FOR CAUSE AND TERMINATION FOR CONVENIENCE

[See the body of the Agreement for this language.]

3. EQUAL OPPORTUNITY ACT.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such

employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. EQUAL OPPORTUNITY ACT FOR FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS.

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's

commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will

otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

5. DAVID-BACON ACT.

(For prime construction contracts in excess of \$2,000.)

Applicable contracts must comply with the Davis Bacon Act, as amended (40 U.S.C. 3141-3148). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

6. LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION

(For construction contracts (incl. alteration and/or repair, including painting and decorating) of a public building or public work, or building or work financed in whole or part from federal funds.)

(1) *Minimum wages.*

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor

which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of

receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the

suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.*

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the

(write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor,

applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees -*

(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received

prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.*

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

(Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).)

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with

respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) ***Withholding for unpaid wages and liquidated damages.*** The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) ***Subcontracts.*** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Note: Section (c) is for contracts subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1

8. COPELAND "ANTI-KICKBACK" ACT

A. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

B. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The

prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

C. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment U. S. Department of Homeland Security Headquarters 500 C St SW Washington, D.C. 20042 Page 13 of 25 www.fema.gov/procurement-disaster-assistance-team To Table of Contents as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

10. CLEAR AIR ACT AND THE FEDERAL WATER POLLUTION CONTRAC ACT

(For contracts over, \$150,000, the contractors must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Contract Act as amended (33 U.S.C. 1251-1387.)

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq* and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 7401 *et seq*.

(2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FEMA, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

11. DEBARMENT AND SUSPENSION

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

12. BYRD ANTI-LOBBYING ACT

The Contractor will be expected to comply with Federal statutes required in the Anti-Lobbying Act.

Contractors who apply or bid for an award shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Note: Contractors who apply or bid for an award of \$100,000 or more shall file the required certification found below in Appendix A.

13. PROCUREMENT OF RECOVERED MATERIALS

A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SERVEILLANCE SERVICES OR EQUIPMENT

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. 2 CFR § 200.216.

15. DOMESTIC PREFERENCES FOR PROCUREMENT

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. 2 CFR § 200.322.

16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

17. ACCESS TO RECORDS

The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide any official from the federal government or the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the federal administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the federal administrator or the Comptroller General of the United States.

18. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

19. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Citations:

Items 1 -15 are from 2 CFR 200, Appendix II

Item 16 is prudent.

Items 17-20 are from FEMA's Recommended Provisions.

APPENDIX A,

44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Total Community Action, Inc. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Shelba French, President/CEO

Signature and Title of Contractor's Authorized Official Representative

August 17, 2023

Date