



INTERGOVERNMENTAL AGREEMENT
BETWEEN
MARICOPA COUNTY
ADMINISTERED BY ITS
HUMAN SERVICES DEPARTMENT
AND
THE CITY OF MESA

Agreement Number: C-22-23-123-X-00

Agreement Amount: \$4,000,000

Agreement Start Date: June 28, 2023

Agreement Termination Date: June 30, 2024

ALN; 21.027 American Rescue Plan Act, Coronavirus State and Local Fiscal Recovery

Unique Entity ID: E2Y8LRS18AU3

1.0 PARTIES

This financial Intergovernmental Agreement (“Agreement”) is between the City of Mesa (“Subrecipient”) and Maricopa County (“County”) administered by its Human Services Department, (“Department”), The County and the Subrecipient collectively are referred to as the “Parties” and individually as the “Party.”

2.0 PURPOSE

Through this Agreement, temporary shelter for homeless individuals and families will be expanded in the Mesa area. The City shall acquire and rehabilitate a hotel/motel (“Property”) where low barrier shelter services will be provided. Approximately 70 shelter units will be made available as emergency housing units for individuals, families and youth. The County shall provide Subrecipient with American Rescue Plan Act Coronavirus State and Local Fiscal Recovery (ARPA) Funds for the acquisition and rehabilitation of a building for this purpose.

3.0 TERM OF AGREEMENT

3.1 The term of this Agreement is from June 28, 2023, through June 30, 2024.

3.2 This Agreement may be extended, up to two years, with the condition the Subrecipient is in compliance with the terms and conditions of this Agreement and the extension is contained in an Amendment as provided in Section 4.0 below.

3.3 This Agreement shall be effective upon approval and signature by both Parties.

4.0 AMENDMENTS

Any changes to this Agreement shall be effective only in a written amendment signed by both Parties.

5.0 ADMINISTRATIVE CHANGE ORDERS AND ADDENDA

- 5.1 The Chairman of the Board of Supervisors is authorized upon the recommendation of the Human Services Department Director and Legal Counsel to: a.) make changes within the general scope of the Agreement on behalf of the County through Administrative Change Orders, and b.) approve and fully execute Addenda which identifies the property(s) purchased by the Subrecipient.
- 5.2 Both Administrative Change Orders and Addenda shall be approved and fully executed by the Parties.
 - 5.2.1 Administrative Change Orders may address any of the following areas:
 - 5.2.1.1 Modifications to the Project timeline if the last day of the Project timeline is within the Agreement term;
 - 5.2.1.2 Modifications to Budget line items if the Agreement Amount remains unchanged;
 - 5.2.1.3 Modifications required by federal, state, or County regulations, ordinances, or policies;
 - 5.2.1.4 Modifications to administrative requirements such as changes in reporting periods, frequency of reports, or report formats required by federal or local regulations, policies, or requirements; and
 - 5.2.1.5 Modifications to Administrative requirements such as changes in reporting periods, frequency of reports, or report formats required by federal or by local regulations, policies, or requirements.
 - 5.2.2 Addenda: The Subrecipient shall submit to the County, an Addendum when the property has been identified and will be acquired.
 - 5.2.2.1 An Addenda shall be integrated into the Agreement.
 - 5.2.2.2 A sample Addendum is attached.

6.0 FUNDING

The County shall provide the Subrecipient with \$4,000,000 of ARPA Funds under Assistance Listing Number (ALN) 21.027 provided to the County through the U.S. Department of Treasury.

7.0 AVAILABILITY OF FUNDS

- 7.1 This Agreement and the Parties' obligations under it shall become effective when funds assigned for the purpose of compensating the Subrecipient are available to the County for disbursement. The County shall be the sole authority in determining the availability of funds under this Agreement, and the County shall keep the Subrecipient fully informed as to the availability of funds.
- 7.2 If any action is taken by any federal, state, local agency, or any other agency or instrumentality other than the Parties to amend, suspend, or terminate its fiscal obligation under or provided in connection with this Agreement, then the Parties may amend, suspend, or terminate this Agreement. In the event of termination, the Parties shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services were performed in accordance with the provisions of this Agreement. Furthermore, upon termination Subrecipient shall be released from all pending responsibilities and have no further obligation to perform under the Agreement unless expressly provided for herein as an obligation

that survives termination. The Parties shall give written notice of their intent to suspend performance or intent to terminate this Agreement under this section at least ten (10) calendar days in advance.

8.0 RESPONSIBILITIES OF ORGANIZATIONS

8.1 The Subrecipient shall:

- 8.1.1 Provide emergency housing beds for homeless individuals, by implementing any of the following:
 - 8.1.1.1 Property acquisition;
 - 8.1.1.2 Hotel/Motel Conversion;
- 8.1.2 Complete the project description in Exhibit A, Statement of Work.
- 8.1.3 Ensure Subrecipient's and any subcontractors' compliance with federal, state, and County requirements as they relate to the federal American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Fund requirements.
- 8.1.4 Ensure Subrecipient's and any subcontractors' compliance with laws, rules, and regulations regarding public improvements and state and local zoning, fire, environmental, health, and safety standards and regulations.
- 8.1.5 Ensure Subrecipient's and any subcontractors' compliance with all laws, rules, and regulations.
- 8.1.6 Ensure the land will be used for services and shelter for people experiencing homelessness for a minimum of 10 years by the City or a non-profit subrecipient following the completion of the project. If the City chooses to sell the project for an alternative use before the 10 years has concluded, the City will fully refund the County \$4,000,000.
- 8.1.7 Maintain a sufficient number of qualified and trained staff to provide services under this Agreement:
- 8.1.8 Complete Quarterly Reports that contain the following information:
 - 8.1.8.1 Status and updates on project timelines;
 - 8.1.8.2 Current quarter expenditures;
 - 8.1.8.3 Anticipated delays or issues;
 - 8.1.8.4 Any recent significant disruptions or issues;
 - 8.1.8.5 Other information the Department should be aware of;
 - 8.1.8.6 Quarterly Reports will be due no later than 30 days after the end of the reporting quarter.
- 8.1.9 Complete the following reports on a 6 month basis after execution of the Agreement: Continuum of Care Annual Performance Report (COC APR), Homeless Management Information System (HMIS) for services provided at the shelter through the extent of the use restriction period listed in 8.1.6 Annual COC APR for both Fiscal and calendar year.

8.2 The County shall:

- 8.2.1 Review invoiced costs related to acquisition/construction/rehab of building and all other costs associated with this project on a monthly basis.
- 8.2.2 Report to the U.S. Department of Treasury on the Subrecipient's use of funds.

9.0 COMPENSATION

- 9.1 Subrecipient shall submit monthly invoices

- 9.1.1 Submit to County all invoiced costs related to purchase and construction of the general services building and all other costs associated with this project on a monthly basis.
- 9.1.2 Initial expenditures must begin within first year of contract; in the event initial spending does not begin within the first year, the County will consider the project on-hold, and written consent from the County will be required to resume spending and project progress.
- 9.2 The Agreement is on a cost reimbursement basis.
- 9.3 The County shall reimburse the Subrecipient on a net 0 payments standard, and shall provide payment to Subrecipient within thirty (30) days of a submitted invoice.
- 9.4 Final Reimbursement Upon Agreement Termination
 - 9.4.1 Prior to termination of this Agreement, at the date identified on page 1 of this Agreement, or as may be amended, the Subrecipient shall submit the final reimbursement request.
 - 9.4.2 This request shall be submitted no later than 30 calendar days after the termination date except as noted immediately below.
 - 9.4.3 If the termination date is between June 10 and June 30, then the final reimbursement request shall be submitted by July 10th.
 - 9.4.4 The final progress report, and any other required reports that may be applicable, such as the program income report, shall be submitted with the final reimbursement request.

10.0 METHOD OF PAYMENT

- 10.1 The Subrecipient shall submit invoices for project activities to hsdfinance@maricopa.gov.
- 10.2 Payment by the County is not to be construed as final in the event that the Department of Treasury disallows payment for the activity or any portion thereof. Funds not expended in implementing this activity or upon completion of the activity shall be returned to the ARPA unprogrammed funds account.

11.0 DISALLOWED COSTS

- 11.1 The cost principles set forth in the Code of Federal Regulations (“C.F.R.”), 2 C.F.R. Part 200 Subpart E, including later amendments and editions on file with the Arizona Secretary of State and incorporated here by reference, shall be used to determine the allowability of incurred reimbursable costs under Agreement. The Subrecipient shall follow cost principles as outlined in Office of Management and Budget (OMB) Uniform Guidance, 2 C.F.R. Part 200.
- 11.2 Those costs that are specifically defined as unallowable in 2 C.F.R. Part 200, Subpart E, shall not be submitted for reimbursement by the Subrecipient and shall not be reimbursed with County funds.

12.0 TERMINATION

- 12.1 Under A.R.S. § 38-511, the Parties may cancel this Agreement without penalty or further obligation within three years (3) after execution of this Agreement, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of one Party at any time while this Agreement or any extension of this Agreement is in effect, is or becomes an employee or agent of any other Party to this Agreement in any capacity or consultant to any other party to this Agreement with respect to the subject matter of this Agreement. Additionally, pursuant to A.R.S. § 38-511, either Party may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting,

or creating this Agreement on behalf of the one Party from the other Party to this Agreement arising as the result of this Agreement. A cancellation notice made under this Subparagraph shall be effective when the recipient receives a written notice of cancellation unless the notice specifies a later date.

- 12.2 Either Party may terminate this Agreement at any time by giving the other Party at least sixty (60) calendar days prior notice in writing (unless terminated by a Party under the Availability of Funds provision). Any notice shall be given by either personal delivery or registered or certified mail, postage prepaid and return receipt requested, to the persons at the addresses set forth on Section 13.0 of this Agreement. In the event of termination, the Parties shall be liable for payment only for reimbursable costs incurred prior to the effective date of the termination, provided that such services were performed in accordance with the provisions of this Agreement. Neither Party shall be liable for any incomplete or additional performance under the Agreement unless expressly stated herein as an obligation that survives termination.
- 12.3 The County may suspend or terminate this Agreement if the Subrecipient violates any term or condition of this Agreement or if the Subrecipient fails to maintain a good-faith effort to carry out the purpose of this Agreement.
- 12.4 The Parties may terminate this Agreement for convenience upon 30 days' prior written notice. The Parties shall agree upon the termination conditions including the effective date of the termination. The Party initiating the termination shall notify the other Parties in writing stating the reasons for such termination.

13.0 NOTICES

Notifications and communications concerning this Agreement shall be directed to the following:

Subrecipient:
City of Mesa
City Manager's Office
Natalie Lewis, Deputy City Manager
(480) 644-4938
Natalie.Lewis@mesaaz.gov
20 E. Main St #150
Mesa, AZ 85201

Maricopa County
Human Services Department
TJ Reed, Homelessness Programs MGR
(602) 317-7056
TJ.Reed@maricopa.gov
234 N. Central Avenue 3rd Floor
Phoenix, AZ 85004

14.0 EMPLOYMENT DISCLAIMER

- 14.1 This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement, partnership, or other formal business association or organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement.
- 14.2 The Subrecipient agrees that no individual performing under this Agreement on behalf of the Subrecipient may be considered a County agent, employee, or representative and that no rights of County civil service, County retirement, or County personnel rules shall accrue or apply to any such individual. The Subrecipient shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workers' compensation, occupational disease compensation, unemployment compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals shall indemnify, defend and hold harmless the County with respect to the foregoing.

- 14.3 The County agrees that no individual performing under this Agreement on behalf of County may be considered a Subrecipient agent, employee, or representative and that no rights of Subrecipient civil service, Subrecipient retirement, or Subrecipient personnel rules shall accrue or apply to any such individual. The County shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workers' compensation, occupational disease compensation, unemployment compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and the County shall indemnify, defend and hold harmless the Subrecipient with respect to the foregoing.

15.0 GENERAL REQUIREMENTS

- 15.1 The terms of this Agreement shall be construed in accordance with Arizona law and the applicable laws and regulations of ARPA. Any lawsuit arising out of this Agreement shall be brought in the superior court Maricopa County, Arizona.
- 15.2 The Subrecipient shall, without limitation, obtain and maintain all licenses, permits and authority necessary to do business, render services and perform work under this Agreement, and shall comply with all laws regarding unemployment insurance, disability insurance and worker's compensation.
- 15.3 The Subrecipient shall comply with the regulations prohibiting a conflict of interest. The Subrecipient shall not make any payments, either directly or indirectly, to any person, partnership, corporation, trust, or other organization that has a substantial interest in Subrecipient's organization or with which the Subrecipient (or any of its directors, officers, owners, trust certificate holders, or a relative thereof) has a substantial interest, unless the Subrecipient has made full written disclosure of the proposed payments to the County and has received written approval for the payments.
- 15.4 For purposes of this provision, the terms "substantial interest" and "relative" shall have the meanings prescribed by A.R.S. § 38-502.

16.0 ASSIGNMENT AND SUBCONTRACTING

- 16.1 No right, liability, obligation, or duty under this Agreement may be assigned, delegated, or subcontracted, in whole or in part, without the prior written approval of the County. The Subrecipient shall bear all liability under this Agreement, even if it is assigned, delegated, or subcontracted, in whole or in part, unless the County agrees otherwise.
- 16.2 In accordance with 2 C.F.R. § 200.331, the Subrecipient may make a "Subaward" as a pass-through entity for the purpose of carrying out a portion of the federal award. The Subrecipient will make determinations classifying recipients of federal funds as a Subrecipient.
- 16.3 Subrecipient shall ensure compliance by any subcontractor with all ARPA requirements, including reporting requirements.

17.0 DISPUTES

- 17.1 Except as otherwise provided for in this Agreement, the Parties may attempt to informally resolve any dispute arising out of this Agreement for a reasonable period of time, but which shall not exceed one hundred twenty (120) calendar days. Disputes which are not resolved in that time period, shall be submitted in accordance with the following formal dispute resolution process.
- 17.2 Notice of the specific grounds of a formal dispute shall be in writing and filed with the County Representative listed in the Notices paragraph, within ten (10) business days

from the date the Subrecipient knew or should have known of the basis of the dispute.

- 17.3 The County Representative shall respond in writing to the Subrecipient within fourteen (14) business days. The decision of the County Representative shall be final and conclusive unless, within seven (7) business days after the date the Subrecipient is served with the decision, the Subrecipient files a written notice of appeal with the Human Services Department Director.
- 17.4 The Department Director shall provide the Subrecipient with a written response within fourteen (14) business days following receipt of the notice of appeal. The decision of the Director shall be final and not appealable, except as provided in subsection 17.6.
- 17.5 Pending a final decision of the Director, the Subrecipient shall diligently proceed with its performance of this Agreement in accordance with the County Representative's decision.
- 17.6 In the event the Subrecipient disagrees with the Director's decision, Subrecipient shall have every existing and future right or remedy available by law or in equity to resolve the dispute.

18.0 SEVERABILITY

If any provision of this Agreement is determined to be invalid, void, or illegal by a court that determination shall in no way affect, impair, or invalidate any other provision of this Agreement, and the remaining provisions shall remain in full force and effect.

19.0 STRICT COMPLIANCE

One Party's acceptance of the other Party's performance that is not in strict compliance with the terms of this Agreement shall not be deemed to waive the requirements of strict compliance for all future performance. All changes in performance obligations under this Agreement shall be in writing and signed by both Parties.

20.0 SINGLE AUDIT ACT REQUIREMENTS

The Subrecipient is in receipt of federal funds through the County and is subject to the federal audit requirements of the Single Audit Act of 1984, as amended (Pub. L. No. 98-502) (codified at 31 U.S.C. § 7501, *et seq.*). The Subrecipient shall comply with 2 C.F.R. 200, Subpart F. Upon completion, such audits shall be made available for public inspection. Audits shall be made available to the County within the twelve (12) months following the close of the fiscal year. The Subrecipient shall take corrective actions within six (6) months of the date of receipt of audit findings. The County shall consider sanctions as described in 2 C.F.R. § 200.505 if it is determined by the County that the Subrecipient is not in compliance with the audit requirements.

21.0 AUDIT DISALLOWANCES

- 21.1 The Subrecipient shall, upon written notice, reimburse the County for any payments made under this Agreement that are disallowed by a federal, state, or County audit in the amount of the disallowance. Court costs and attorney and expert fees incurred will be specifically identified as applicable to the recovery of the disallowed costs in question.
- 21.2 If the County determines that a cost for which payment has been made is a disallowed cost, then the County will notify the Subrecipient in writing of the disallowance and the required course of action, which shall be at the option of the County, either to adjust any future claim submitted by the Subrecipient by the

amount of the disallowance or to require immediate repayment of the disallowed amount by the Subrecipient issuing a check payable to the County.

22.0 PROPERTY

22.1 Any County property furnished or leased pursuant to the terms of this Agreement shall be utilized, maintained, repaired, and accounted for in accordance with instructions furnished by the County, and title to all such property shall revert to the County upon the expiration or termination of this Agreement. The costs to repair such property are the responsibility of the Subrecipient within the limits budgeted in this Agreement.

22.2 Any Subrecipient property furnished or purchased pursuant to the terms of the Agreement shall be utilized, maintained, repaired, and accounted for by the Subrecipient. Repair costs of such property shall be the responsibility of the Subrecipient.

23.0 LIMITATION ON LIABILITY

23.1 The County and its agents, representatives, officials, officers, directors, employees, volunteers, departments, agencies, boards, committees, and commissions shall not be liable for any act or omission by the Subrecipient or any and all of its agents, representatives, officials, officers, directors, employees, volunteers, departments, agencies, boards, committees, or commissions occurring in the performance of this Agreement, nor shall the County and its agents, representatives, officials, officers, directors, employees, volunteers, departments, agencies, boards, committees, and commissions be liable for purchases or contracts made by the Subrecipient or any and all of its agents, representatives, officials, officers, directors, employees, volunteers, departments, agencies, boards, committees, or commissions in connection with this Agreement, except as otherwise provided by law.

23.2 The Subrecipient and its agents, representatives, officials, officers, directors, employees, volunteers, departments, agencies, boards, committees, and commissions shall not be liable for any act or omission by the County or any and all of its agents, representatives, officials, officers, directors, employees, volunteers, departments, agencies, boards, committees, or commissions occurring in the performance of this Agreement, nor shall the Subrecipient and its agents, representatives, officials, officers, directors, employees, volunteers, departments, agencies, boards, committees, and commissions be liable for purchases or contracts made by the County or any and all of its agents, representatives, officials, officers, directors, employees, volunteers, departments, agencies, boards, committees, or commissions in connection with this Agreement, except as otherwise provided by law.

24.0 GENERAL INDEMNIFICATION

Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party and its officers, officials, employees, and agents (collectively, "Indemnitees") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney and expert fees) (collectively referred to as "Claims") either arising from or related to breach of this Agreement, but only to the extent that such Claims are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor and any and all of its agents, representatives, officials, officers, directors, employees, volunteers, departments, agencies, boards, committees, and commissions. The obligations under this Section 24 shall survive termination of this Agreement.

25.0 INSURANCE

Each Party is a public entity and shall provide the other Party a Certificate of Self-Insurance equal to:

General Aggregate	\$3,000,000
Each Occurrence Limit	\$1,000,000

26.0 OFFSHORE PERFORMANCE OF WORK PROHIBITED

Due to security and identity protection concerns, direct services under this Agreement shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or “overhead” services, redundant back-up services, or services that are incidental to the performance of the Agreement. The provision applies to work performed by Subrecipients or Subcontractors at all tiers.

27.0 TECHNICAL ASSISTANCE

The County will provide reasonable technical assistance to the Subrecipient to assist in complying with state and federal laws, and regulations, and accountability for diligent performance and compliance with the terms and conditions of this Agreement and all applicable laws, regulations, and standards. However, this assistance in no way relieves the Subrecipient of full responsibility and accountability for its actions and performance in compliance with the terms of this Agreement.

28.0 STAFF AND VOLUNTEER TRAINING

The County may make available to the Subrecipient the opportunity to participate in any applicable training activities conducted by the County.

29.0 CLEAN AIR ACT

If the total face value of this Agreement exceeds \$100,000, the Parties agree to comply with all regulations, standards and orders issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. §§ 7401, *et seq.*), to the extent any are applicable by reason of performance of this Agreement.

30.0 LOBBYING

30.1 No federal appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal agreement, 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 agreement, grant, loan, or cooperative agreement.

30.2 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 any federal agreement, grant, loan or cooperative agreement, then the Subrecipient shall complete and submit OMB

Form-LLL, titled "Disclosure of Lobbying Activities," in accordance with its instructions and 31 U.S.C. § 1352.

31.0 RELIGIOUS ACTIVITIES

The Subrecipient warrants that none of its costs and none of the costs incurred by the Subrecipient or any of its subcontractors or subrecipients will include any expense related to any religious activities.

32.0 POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services contributed by the County under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

33.0 COVENANT AGAINST CONTINGENT FEES

The Subrecipient warrants that no persons or entities have been employed or retained by it to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the County may immediately terminate this Agreement without liability.

34.0 RIGHTS IN DATA

The Parties shall each have the use of data and reports resulting from this Agreement without cost or other restriction, except as otherwise provided by law or applicable regulation. Each Party shall supply to the other Party, upon request, any available information that is relevant to this Agreement and to the performance under it, except to the extent prohibited by law.

35.0 COPYRIGHTS

If this Agreement results in a book or other written material, the author is free to copyright the work, but the Parties reserve a royalty-free, nonexclusive, perpetual and irrevocable license to reproduce, publish, and otherwise use and to authorize others to use, all copyrighted material and all material that may be copyrighted as a result of this Agreement.

36.0 AGREEMENT COMPLIANCE MONITORING/AUDITING

36.1 The County will monitor the Subrecipient's compliance as needed for fiscal and programmatic performance under the terms and conditions of this Agreement and applicable regulations promulgated by the U.S. Department of Housing and Urban Development and Maricopa County. On-site visits for compliance monitoring may be made by the County and/or its grantor agencies at any time during the Subrecipient's normal business hours, announced and/or unannounced. For auditing purposes, the County shall provide the Subrecipient with 30-days' advance notice of any proposed on-site visit. During an on-site visit(s), the Subrecipient shall reasonably make all of its records and accounts related to work performed or services provided under this Agreement available to the County for inspection and copying.

36.2 The County shall request information for fiscal monitoring/audit per Uniform Guidance 2 C.F.R. § 200, to include as applicable:

36.2.1 Financial Management 2 C.F.R. § 200.302

36.2.2 Internal Controls 2 C.F.R. § 200.303

36.2.3 Bonds 2 C.F.R. § 200.304

36.2.4 Payment and Financial Reporting 2 C.F.R. § 200.305

36.2.5 Cost Sharing or Matching 2 C.F.R. § 200.306

- 36.2.6 Program Income 2 C.F.R. § 200.307
- 36.2.7 Revision of Budget and Program Plans 2 C.F.R. § 200.308
- 36.2.8 Period of Performance 2 C.F.R. § 200.309
- 36.2.9 Insurance Coverage 2 C.F.R. § 200.310
- 36.2.10 Record Retention and Access 2 C.F.R. §§ 200.334 – 200.338
- 36.2.11 Procurement Standards 2 C.F.R. § 200.318
- 36.2.12 Indirect Costs 2 C.F.R. § 200.414
- 36.2.13 Compensation-Personal Services 2 C.F.R. § 200.430
- 36.2.14 Audit Requirements 2 C.F.R. §§ 200.501-200.517

37.0 CONTINGENCY RELATING TO OTHER AGREEMENTS AND GRANTS

- 37.1 The Subrecipient shall, during the term of this Agreement, within fifteen (15) business days from acceptance, inform the Director in writing of the award of any other agreement or grant, including any other agreement or grant awarded by the County, where the award may affect either the direct or indirect costs being paid or reimbursed under this Agreement. The Subrecipient’s failure to notify the County of any such agreement shall be a breach of this Agreement and the County may immediately terminate this Agreement without liability.
- 37.2 The Director may request, and Subrecipient shall provide within a reasonable time, which shall not exceed ten (10) business days, a copy of all such other agreements or grants, when, in the opinion of the Director, the award of the agreement or grant may affect the costs being paid or reimbursed under this Agreement, except to the extent prohibited by law.
- 37.3 If the Director determines that the award to the Subrecipient of such other agreements or grants has affected the costs being paid or reimbursed under this Agreement, then the Director shall prepare an amendment to this Agreement effecting a cost adjustment. If the Subrecipient disputes the proposed cost adjustment, then the dispute shall be resolved pursuant to the "Disputes" paragraph of this Agreement.

38.0 MINIMUM WAGE REQUIREMENTS

The Subrecipient warrants that it shall pay all of its employees who are engaged in either performing work or providing services under the terms of this Agreement not less than the minimum wage specified under Section 206(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §§ 201, et seq.), by law and regulation, and, as applicable, Executive Order 13658, as amended, and as specified by Arizona law.

39.0 RECOGNITION OF COUNTY SUPPORT

The Subrecipient shall give recognition to the County and the funding source for its support when the Subrecipient publishes materials or releases public information that is paid for in whole or in part with funds received by the Subrecipient under this Agreement.

40.0 NONDISCRIMINATION, EQUAL OPPORTUNITY AND EQUAL ACCESS

The Subrecipient, in connection with any services or other activities under this Agreement, shall not in any way discriminate against any person on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief. The Subrecipient shall include this clause in all its Subcontracts.

41.0 DISABILITY REQUIREMENTS

The Subrecipient agrees that any electronic or information technology offered under this Agreement shall comply with A.R.S. §§41-2531 and 41-2532 and Section 508 of the

Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

42.0 EQUAL EMPLOYMENT OPPORTUNITY

- 42.1 The Parties shall not discriminate against any employee or applicant for employment because of race, age, disability, color, religion, sex, sexual identity, gender identity, or national origin.
- 42.2 The Parties shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, disability, color, religion, sex sexual identity, gender identity, or national origin. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 42.3 The Parties shall and shall cause their respective Subcontractors to comply with:
 - 42.3.1 Title VI and VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000a, *et seq.*);
 - 42.3.2 the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 701, *et seq.*);
 - 42.3.3 the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. §§ 621, *et seq.*);
 - 42.3.4 the Americans With Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*); and
 - 42.3.5 Arizona Executive Order 2009-09, as amended, *et seq.* which mandates that all persons shall have equal access to employment opportunities.

43.0 UNIFORM ADMINISTRATIVE REQUIREMENTS

By entering into this Agreement, the Parties agree to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, Part 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. §§ 200, *et seq.*

44.0 FINANCIAL MANAGEMENT

The Subrecipient shall establish and maintain a separate, interest-bearing bank account for money provided under this Agreement, or shall establish an accounting system that assures the safeguarding and accountability of all money and assets provided under this Agreement. No part of the money deposited in the bank account shall be commingled with other funds or money belonging to the Subrecipient. All interest earned on the account shall be disbursed in a manner specified by the County in accordance with applicable State of Arizona and federal regulations. The Subrecipient shall provide a signed bank account agreement authorizing the County to obtain information about the account. If an accounting system is used, then it shall be in accordance with generally accepted accounting principles.

45.0 RETENTION OF RECORDS

- 45.1 This provision applies to all financial and programmatic records, supporting document, statistical records, and other records of the Subrecipient that are related to this Agreement.
- 45.2 The Subrecipient shall retain all records relevant to this Agreement for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is longer, and the County, federal and state

auditors and any other persons duly authorized by the County shall have full access to, and the right to examine, copy, and make use of any and all of the records.

46.0 ADEQUACY OF RECORDS

If the Subrecipient's books, records and other documents related to this Agreement are not sufficient to support and document that allowable services were provided to eligible participants as determined by a court of competent jurisdiction, then the Subrecipient shall reimburse the County for the services not supported and documented.

47.0 IMMIGRATION LAWS AND REGULATIONS

47.1 Federal Immigration and Nationality Act

47.1.1 The Subrecipient understand and acknowledge the applicability of the Immigration Reform and Control Act of 1986 (IRCA). The Subrecipient agrees to comply with the IRCA in performing under this Agreement and to permit the County to reasonably inspect personnel records to verify such compliance, to the extent required by law.

47.1.2 By entering into this Agreement, the Subrecipient warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other federal immigration laws and regulations related to the immigration status of its employees. The Subrecipient shall obtain statements from their subcontractors certifying compliance and shall furnish the statements to the County upon request. These warranties shall remain in effect through the term of the Agreement. The Subrecipient and their subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work under the Agreement. I-9 forms are available for download at USCIS.GOV.

47.1.3 The County may request verification of compliance for any employee or Subcontractor performing work under the Agreement. Should the County suspect or find that the Subrecipient or any of its Subcontractors are not in compliance, then the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Agreement for default, and suspension or debarment (or both) of the Subrecipient. All costs necessary to verify compliance are the responsibility of the Subrecipient or its Subcontractor.

47.2 **Arizona Law:** The Subrecipient warrants that it is in compliance with A.R.S. § 41-4401 (e-verify requirements) and further acknowledges that:

47.2.1 the Subrecipient and Vendors, if any, warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214;

47.2.2 A breach of a warranty under this Subparagraph 47.2.2 shall be deemed a material breach of this Agreement and the non-breaching Party may immediately terminate this Agreement without liability; and

47.2.3 The County and any contracting government entity retain the legal right to inspect the papers and employment records of the Subrecipient or its Vendor's employees who works on this Agreement to ensure that such Party or Vendor is complying with the warranty provided under this Subparagraph 47.2.3 and that the Subrecipient agree to make all papers and employment records of those employees available during normal working hours in order to facilitate such an inspection.

48.0 DRUG FREE WORKPLACE ACT

The Subrecipient shall comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701, *et seq.*), which requires that Subrecipients and grantees of federal funds must certify that they will provide drug-free workplaces. This certification is a precondition to receiving a grant or entering into this Agreement.

49.0 CERTIFICATION REGARDING DEBARMENT, SUSPENSION INELIGIBILITY AND VOLUNTARY EXCLUSION

49.1 The undersigned, by signing this Agreement, represents that he/she has the authority to bind the Subrecipient to the terms of this Certification. The Subrecipient, as the primary participant in accordance with 2 C.F.R. Part 180, certifies to the best of its knowledge and belief that it and its principals:

49.1.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

49.1.2 Have not within a 3-year period preceding the Start Date of this Agreement, been convicted of or had a civil judgment rendered against them for (1) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction; (2) the violation of any federal or State antitrust statutes or (3) the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

49.1.3 Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with the commission of any of the offenses enumerated in Sub-subparagraph 49.1.2 above; and

49.1.4 Have not, within a three-year period preceding this Start Date of this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

49.2 The Subrecipient agrees to include, without modification, this clause in all lower tier covered transactions (i.e., transactions with Subcontractors) and in all solicitations for lower tier covered transactions related to this Agreement.

50.0 SUBRECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS:

50.1 The Subrecipient agrees that this Agreement and its employees working on this Agreement will be subject to the whistleblower rights and remedies in the federal pilot program established at 41 U.S.C. § 4712 by Section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and Section 3.908 of the Federal Acquisition Regulation;

50.2 The Subrecipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described in Section 3.908 of the Federal Acquisition Regulation. Documentation of such employee notification must be kept on file by the Subrecipient and copies provided to County upon request; and

50.3 The Subrecipient shall insert the substance of this clause, including this Paragraph 50.0, in all subcontracts over the agreed upon simplified acquisition threshold (\$250,000 as of June 2021).

51.0 WRITTEN CERTIFICATION PURSUANT TO A.R.S. § 35-393.01

If the Subrecipient engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000 or more, then the Subrecipient certifies it is not currently engaged in, and agrees for the duration of this Agreement not to engage in, a boycott of goods and services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

52.0 SURVIVAL

The indemnification, hold harmless, defense, and non-liability provisions of this Agreement shall have full force and effect notwithstanding any other provisions in this Agreement and shall survive the termination or expiration of this Agreement.

53.0 DEFAULT AND REMEDIES FOR NONCOMPLIANCE

53.1 Notwithstanding anything to the contrary, this Section shall not be deleted or superseded by any other provision of this Agreement.

53.2 This Agreement may be immediately terminated by a Party if the other Party defaults by failing to perform any objective or breaches any obligation under this Agreement, or any event occurs that jeopardizes the other Party's ability to perform any of its obligations under this Agreement.

53.3 Failure to comply with the requirements of this Agreement and all the applicable federal, state, or local laws, rules, and regulations may result in suspension or termination of this Agreement, the return of unexpended funds (less just compensation for work satisfactorily completed that, to date, had not been reimbursed), the reimbursement of funds improperly expended, or the recovery of funds improperly acquired. Noncompliance includes, but is not limited to:

53.3.1 Non-performance of any obligations required by this Agreement.

53.3.2 Noncompliance with any applicable federal, state, or local laws, rules, or regulations.

53.3.3 Unauthorized expenditure of funds.

53.3.4 Noncompliance with applicable financial record requirements, accounting principles, or standards established by OMB circulars and 2 C.F.R. §§ 200 *et seq.*

53.3.5 Noncompliance with recordkeeping, record retention, or reporting requirements.

53.4 Notwithstanding the suspension or termination of this Agreement, or the final determination of the proper disposition of funds, the Subrecipient shall, without intent to limit or with restrictions, be subject to the following:

53.4.1 Acknowledge that suspension or termination of this Agreement does not affect or terminate any rights against the Subrecipient at the time of suspension or termination, or that may accrue later. Nothing herein shall be construed to limit or terminate any right or remedy available under Agreement.

53.4.2 Waiver of a breach or default of any term, covenant, or condition of this Agreement or any federal, state, or local law, rule, or regulation shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, condition, law, rule, or regulation.

53.5 The Subrecipient shall, upon notice or with knowledge obtained by itself or others, take any and all proactive actions necessary, and provide any and all applicable remedies to address and correct any act by itself, and any and/or all of its agents, representatives, officers, officials, directors, employees, volunteers, successors, assigns, or Subcontractors that resulted in any wrongdoing (intentional or unintentional); misuse or misappropriation of funds; the incorrect or improper

disposition of funds; any violation of any federal, state, or local law, rule, or regulation; or the breach of any certification or warranty provided in this Agreement.

54.0 ADMINISTRATIVE REQUIREMENTS

- 54.1 Accounting Standards –the Subrecipient agrees to comply with this Agreement and to adhere to the accounting principles and procedures required to utilize adequate internal controls and maintain necessary source documentation for all costs incurred, as well as any applicable federal laws and regulations. The Subrecipient further agrees to maintain an adequate accounting system that provides for appropriate grant accounting (including calculation of program income).
- 54.2 Repayment of Funds – The Subrecipient agrees to repay funds provided under this Agreement for noncompliance with the terms of this Agreement. Repayment shall be in accordance with the terms of this Agreement or the requirement of applicable laws and regulations, including continuing use compliance. The County shall specify in writing, the terms of the repayment or alternative terms in lieu of repayment. However, in no case shall repayment or compliance with the alternative terms be complete any later than sixty (60) calendar days following the written determination of noncompliance by the County.
- 54.3 Documentation and Record Keeping - Each Party agrees to comply with this Agreement and the following record keeping requirements:
 - 54.3.1 Records to be maintained - Each Party shall maintain all financial records as required by 2 C.F.R. § 200, and OMB Circulars;
 - 54.3.2 System for Award Management -The Subrecipient and all subcontractors or subrecipients shall have a valid Unique Entity Identifier (UEI) number and an active profile in the federal System for Award Management, or SAM.gov. Documentation of the UEI Number must be included in all project files.
 - 54.3.3 Records Retention - The Parties shall retain all records pertinent to this Agreement for a period of six (6) years after all requirements have been met. In the event of litigation, a claim, or an audit is begun before the expiration of this retention period, said records shall be retained until all such action or audit findings involving the records have been resolved.
 - 54.3.4 Disclosure - The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the County's or the Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service.
 - 54.3.5 Property Records - The Subrecipient shall maintain property and equipment inventory records that clearly identify properties and equipment purchased, improved, or sold. Properties and equipment retained shall continue to meet eligibility criteria and shall conform to the use of property and equipment.
- 54.4 Written Justification – The Parties will cooperate to develop the Written Justification for the capital expenditures exceeding \$1 million pursuant to Overview of General Standards, 87 Fed. Reg. 4390 (Jan. 27, 2022).

55.0 UYGHUR FORCED LABOR PREVENTION ACT (UFLPA)

- 55.1 The Subrecipient warrants and certifies that it does not currently, and agrees for the duration of the agreement that it will not, use:
- 55.1.1 The forced labor of ethnic Uyghurs in the People's Republic of China.
 - 55.1.2 Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
 - 55.1.3 Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- 55.2 If the Contractor becomes aware during the term of the Agreement that the Company is not in compliance with this paragraph, the Contractor shall notify the County within five business days after becoming aware of the noncompliance. Failure of the Contractor to provide a written certification that the Contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Agreement shall terminate unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

56.0 FORCE MAJEURE

- 56.1 Neither Party shall be liable for failure of performance, nor incur any liability to the other Party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the Parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane, or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, pandemic, and interruption or failure of electricity or telecommunication service.
- 56.2 Each Party, as applicable, shall give the other Party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.
- 56.3 The Party asserting Force Majeure as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, all non-excused obligations were substantially fulfilled, and the other Party was timely notified of the likelihood or actual occurrence that would justify such an assertion, so that other prudent precautions could be contemplated.

[Signatures contained in following page]

EXHIBIT A- STATEMENT OF WORK

1.0 Project Description:

The Project as described herein, shall utilize ARPA funds for the City of Mesa to purchase existing hotel property at 6733 E. Main Street for the sole purpose of providing temporary housing and services to people experiencing homelessness or transitioning out of homelessness. A minimum of 70 rooms will be provided, in addition to a minimum of 15 ‘dusk to dawn’ beds for use during participant on/off boarding or for an emergency when waiting for a room to be available. The City will subcontract with Community Bridges, Inc. to operate the services, and the City will provide onsite police presence and security.

2.0 Deliverables:

Beneficiaries	
Number of households (units)	70
Number of people (approximate)	500 people annually

3.0 Project Eligibility:

3.1 Property Standards - Housing that is constructed or rehabilitated with ARPA funds must meet all applicable local codes, rehabilitation, and construction standards, ordinances, and zoning ordinances, including Section 504 of the Rehabilitation Act of 1973 and Fair Housing Act, as amended, at the time of project completion.

3.2 Occupancy Requirements – The Project staff shall determine and verify homelessness upon intake according the definition by the Department of Housing and Urban Development (HUD) as notated:

<https://www.hudexchange.info/news/huds-definition-of-homelessness-resources-and-guidance/>

4.0 Budget:

BUDGET SUMMARY			
Name of Activity: Purchase hotel at 6733 E. Main Street, Mesa for emergency/transitional housing			
	County ARPA Funds	Additional Sources	TOTAL COST
Acquisition Costs			
Land	N/A	N/A	N/A
Building Acquisition	\$4,000,000	\$3,440,000	\$7,440,000
Other: taxes, title, recording	N/A	N/A	N/A

5.0 Timeline:

Project Milestone	Estimated Completion Date	Comments
Site Acquisition	October 31, 2023	
Partnership Closing (Closing Date)	October 31, 2023	
Permanent Loan Commitment	NA	
Permanent Loan Closing	NA	
Other Funds Firm Commitment	NA	
Other Funds Firm Commitment	NA	

Environmental Review Completion (Only if other federal funding is used in addition to funds designated in this contract).	Summer 2023	
Authority to Use Grant Funds	May 15, 2023	
Zoning Entitlements	October 15, 2023	