

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“Agreement”), is made and entered into on the _____ day of _____ 2023, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A (“LFUCG”), 200 East Main Street, Lexington, Kentucky 40507, and **HOPE CENTER, INC.**, (“Organization”) with offices located at 298 W. Loudon Avenue, Lexington, Kentucky 40508.

WITNESSETH

WHEREAS, LFUCG, through its wholly-owned corporate entity Lexington-Fayette Urban County Government Public Facilities Corporation, owns property located at 298 W. Loudon Avenue (“Facilities”);

WHEREAS, the Organization leases the Facilities from LFUCG and the Organization uses the Facilities to operate an emergency, overnight shelter for men who are experiencing homelessness in Fayette County;

WHEREAS, LFUCG routinely provides funding to Organization to provide these emergency shelter services for men experiencing homelessness;

WHEREAS, the Organization has proposed building the Hope Center Transitional Housing addition onto the Facilities, which will offer transitional housing to those experiencing homelessness, in order to reduce reliance on shelter services and address root causes of homelessness;

WHEREAS, LFUCG believes that funding this addition of its Facilities in order to offer transitional housing could decrease homelessness in Fayette County;

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions and covenants hereinafter set forth, the parties hereto agree as follows:

1. **EFFECTIVE DATE; TERM.** This Agreement shall have an effective date of February 1, 2023, and shall last until August 31, 2024, unless terminated by LFUCG at an earlier time.

2. **RELATED DOCUMENTS.** This Agreement shall consist of the terms herein as well as the following additional documents, which are attached hereto as exhibits and incorporated by reference as if fully stated herein:

A. Exhibit A – Revised American Rescue Plan Act Proposal

B. Exhibit B – Certification of Compliance for Expenditures using American Rescue Plan Act Funds

To the extent that there is any conflict between or among any of these documents, the terms and provisions of Exhibit B shall prevail first, then the terms and conditions of this Agreement, followed by the terms and conditions of Exhibit A.

3. **SCOPE OF WORK.** Organization shall complete the project(s) specified within the attached Exhibit A (“Project(s)”) and as further specified in this Agreement. The Organization shall complete the Projects in a timely, workmanlike and professional manner, as specified herein.

4. **PAYMENT.** LFUCG shall pay Organization a total amount not to exceed **TWO MILLION DOLLARS (\$2,000,000.00)** (“Funds”) for the completion of the Project(s). The uses of the Funds are limited to payment for goods and services directly related to the construction of the Hope Center Transitional Housing addition, as described in Exhibit A. Funds may not be spent for any other purpose without the prior written consent of LFUCG. Absent any additional written agreement stating otherwise, any travel or other expenses are excluded from the above payment schedule.

a. LFUCG shall make payment under this Agreement upon timely submission of an invoice(s) from Organization specifying the nature of work performed, accompanied by data satisfactory to LFUCG to document entitlement to payment for work completed to date. LFUCG shall have thirty (30) days from the date of receipt of the invoice to pay the invoice amount. LFUCG reserves the right to refuse payment if it is determined by LFUCG that any of the work performed on the Projects is inadequate or defective.

b. The Organization agrees to first apply the balance of the Funds toward payment of any soft or hard costs related to construction of the Hope Center Transitional Housing addition before the Organization applies the balance of any proceeds it has received from any other funding source, including but not limited to bond proceeds and/or loan proceeds, toward payment of those costs.

c. LFUCG also reserves the right to reject any invoice submitted for services more than sixty (60) days after the services were rendered.

5. **CONSTRUCTION TERMS.** The following terms shall apply to any work completed on the Project:

a. **Right to Oversee Project Retained.**

LFUCG retains the right, at any time during the term of this Agreement, to designate an employee or agent of LFUCG who will have the right to review all proposed work related to the Projects before construction for that proposed work begins, and the Organization agrees that LFUCG’s designated person may make any revisions to the scope, design and/or delivery, including rejection of any portion thereof, that the employee or agent deems appropriate, in his or her discretion, but LFUCG agrees that its designated person shall work in good faith, and shall allow input from the Organization, if this discretion is exercised. Organization and Organization’s contractors must comply with all directives and revisions made by whomever LFUCG designates for this purpose. LFUCG further agrees that it shall not make any changes to the work related to the Project if those changes

would conflict with any requirements imposed by other grantors who are providing funds for the completion of the Addition.

b. Project to be Completed in Workmanlike Manner.

Organization shall bid, contract for, and cause to prosecute to completion, the Projects described herein in a good, safe and workmanlike manner, and in compliance with all applicable codes, ordinances, laws and regulations. Organization shall take necessary action to protect the life, health, safety, and property of all personnel on the job site, members of the public, and personnel.

c. Permits.

Organization agrees to obtain all necessary local, state, and federal permits, encroachments, permissions, approvals, etc. in a timely manner and prior to start of construction.

d. Building Regulations.

Organization asserts that it is in full compliance with all applicable provisions of the Lexington-Fayette Urban County Government's Code of Ordinances Chapter 5 – Buildings and Building Regulations, Chapter 7 – Finance and Taxation, Chapter 12 – Housing, and Chapter 16 – Sewage, Garbage, Refuse, and Weeds, or in compliance with Kentucky Department of Housing Buildings and Construction rules and requirements as is appropriate for those state institutions, parcels, or buildings which are subject to state regulations and oversight as opposed to local ordinances and regulations. If the Organization becomes out of compliance with any of these provisions, it will provide written notice to LFUCG immediately. Failure to notify LFUCG and resolve any such matters to the satisfaction of LFUCG may lead to termination of the Agreement for cause.

e. No Liens.

Organization will cause all work to be performed, including all labor, materials, supervision, supplies, equipment, architectural, and engineering services necessary to complete the improvements, in accordance with all applicable standards in the construction industry. The Organization will complete the improvements free from all materialmen's liens and all mechanic's liens and claims. All contracts with subcontractors and materialmen will contain, upon the request of LFUCG, a provision for not less than ten percent (10%) retainage to ensure adequate and complete performance in connection with interim or progress payments hereunder.

f. Right of Inspection.

Organization will permit access by LFUCG to the books and records of Organization related to the Project at reasonable times. In the event LFUCG determines that any work or materials are not substantially in conformance with applicable standards in the construction industry, or are not in conformance with any applicable laws, regulations,

permits, requirements or rules of any governmental authority having or exercising jurisdiction thereover or are not otherwise in conformity with sound building practices, LFUCG may stop the work and order replacement or correction of any such work or materials. Such inspection will not be construed as a representation or warranty by LFUCG to any third party that the improvements are, or will be, free of faulty materials or workmanship.

g. Nonliability.

This Agreement will not be construed to make LFUCG liable to materialmen, contractors, craftsmen, laborers or others for goods and services delivered by them to or upon the property on which the Project is constructed, or for debts or claims accruing to said parties against the Organization. There are no contractual relationships, either express or implied, between LFUCG and any materialman, contractors, craftsmen, laborers or any other persons supplying work, labor or materials on the job, nor will any third person or persons, individual or corporate, be deemed to be beneficiaries of this Agreement or any term, condition or provisions hereof or on account of any actions taken or omitted by LFUCG pursuant hereto.

6. **FEDERAL LAW.** The Organization understands that the Funds paid by LFUCG were awarded under the American Rescue Plan Act of 2021 (“ARPA”). Organization agrees to comply with any requests from LFUCG related to LFUCG’s ongoing monitoring and reporting obligations set by federal law. Organization understands that the failure to comply may result in termination of this Agreement. Organization further agrees and by entering this Agreement, it hereby certifies to its ability to comply with all terms included within Exhibit B attached hereto.

7. **TERMINATION.** LFUCG, through the Mayor or the Mayor’s designee, may terminate this Agreement for any reason whatsoever by providing Organization with at least thirty (30) days advance written notice. Organization shall be entitled for payment of all work performed up to that period of time, calculated on a reasonable basis.

a. In the event of a termination based upon a material condition of non-performance or default by Organization, LFUCG shall provide Organization with advance written notice and a reasonable period of time to cure the breach.

b. Organization may only terminate this Agreement based upon LFUCG’s failure to timely pay for properly invoiced and accepted work. Organization shall provide LFUCG with at least thirty (30) days’ advance written notice and an opportunity to cure prior to termination.

c. Organization acknowledges that LFUCG is a governmental entity, and that the validity of this Agreement is based upon the availability of appropriated funding. In the event that such funding is not appropriated in a future fiscal year, LFUCG’s obligations under this Agreement shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to Organization. LFUCG shall exercise any application of this provision in good faith.

8. REPORTING. Organization shall provide LFUCG with timely quarterly reports and updates related to the completion of the Projects in the form and manner reasonably specified by LFUCG.

9. REGISTRATION; COMPLIANCE; AUTHORITY TO SIGN. Organization shall be lawfully registered or authorized to do business in the Commonwealth of Kentucky and Lexington-Fayette County and shall at all times comply with any and all applicable federal, state, and local laws, ordinances, and regulations. LFUCG may request proof that Organization has timely filed federal, state, or local tax forms which shall be provided by Organization on a timely basis. The person signing this Agreement on behalf of Organization is fully authorized to do so.

10. INSURANCE; INDEMNITY.

a. At all times relevant to the performance of this Agreement, Organization shall maintain insurance coverages in at least the following amounts, which shall be properly filed and approved by the Kentucky Department of Insurance. Evidence of such coverage shall be made available to LFUCG upon request. General Liability (\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit); Commercial Automobile Liability (combined single, \$1 million per occurrence); (if applicable) Professional Liability (\$1 million per occurrence, \$2 million aggregate); Worker's Compensation (Statutory); and Employer's Liability (\$1 million).

b. Organization shall indemnify, defend and hold harmless LFUCG and its elected and appointed officials, employees, agents, volunteers, and successors in interest, from and against any and all liability, damages, and losses, including but not limited to: demands, claims, liens, suits, notices of violation from governmental agencies, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Organization's performance of, or breach of this Agreement and/or the provision of goods or services, provided that (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of Organization or its officials, employees, or agents; and (b) not caused solely by willful misconduct of LFUCG.

c. Organization understands and agrees that its obligation to defend LFUCG includes the obligation to investigate, handle, respond to, resist, provide a defense for, and defend claims, at Organization's expense, using attorneys approved in writing by the LFUCG, which approval shall not be unreasonably withheld.

d. Organization further understands and agrees that its obligation to indemnify includes, but is not limited to: attorney fees and expenses, costs of litigation, court and administrative costs, expert witness fees and expenses, judgments, fines, penalties, interest, all environmental cleanups and remediation costs of whatever kind, and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of Organization and LFUCG, and damage to, or destruction of, any property, including the property of LFUCG.

e. This provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement.

f. Organization understands that LFUCG is a political subdivision of the Commonwealth of Kentucky and acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the Organization in any manner

11. RECORDS. Organization shall keep and make available to LFUCG any records related to this Agreement as are necessary to support its performance of the services for a period of at least five (5) years following the expiration or termination of this Agreement, or as otherwise required depending upon the source of funds. Books of accounts shall be kept by Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of Organization related to this Agreement and shall be made available to LFUCG upon request.

a. LFUCG shall be the owner of all final documents, data, studies, plans, reports, and information prepared by Organization under this Agreement.

b. Organization understands and agrees that this Agreement and any related documents may be subject to disclosure under the Kentucky Open Records Act and will comply with any reasonable request by LFUCG to provide assistance with such a request.

12. ACCESS. Organization shall allow LFUCG any necessary reasonable access to monitor its performance under this Agreement.

13. CONTRACTUAL RELATIONSHIP ONLY. In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

14. EQUAL OPPORTUNITY; FAIRNESS ORDINANCE. Organization shall provide equal opportunity in employment for all qualified persons, and shall (a) prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation, gender identity, or handicap, (b) promote equal employment through a positive, continuing program of equal employment, and (c) cause any subcontractor or agency receiving funds provided pursuant to this Agreement to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices. Organization agrees to comply with LFUCG's Fairness Ordinance (Ordinance No. 201-99) and all sources of applicable law, including those specified in any Exhibit attached to this Agreement and incorporated herein by reference.

15. SEXUAL HARASSMENT. Organization must adopt or have adopted a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints. The policy shall be given to all employees and clients and shall be posted at all locations where Organization conducts business. The policy shall be made available to LFUCG upon request.

16. **DISPOSITION AND/OR CHANGE IN USAGE OF PROPERTY.** Organization agrees that it shall use the Hope Center Transitional Housing addition (“Addition”) solely for the provision of transitional housing and related case management services, and that it shall not use the Addition to provide emergency shelter services. Further, it shall not change the purpose or use, nor shall it allow any other entity who subleases any portion of the Facilities to change the purpose or use, of the Addition without first obtaining the written consent of LFUCG. Organization agrees that this provision shall survive termination of the Agreement. If Organization breaches this provision, Organization may be liable to LFUCG for that breach in an amount that shall not exceed the fair market value of the Addition. LFUCG further reserves the right to enforce this provision through any remedy available at law, equity, or in bankruptcy.

17. **KYHMIS.** Organization agrees that it shall ensure that data on all persons served and/or all activities assisted with using any amount of Funds provided under this Agreement shall be entered into the applicable Kentucky Homeless Management Information System (KYHMIS) in accordance with standards of the U.S. Department of Housing and Urban Development and the Continuum of Care. The Organization further agrees that this provision shall survive termination of this Agreement.

18. **INVESTMENT.** Any investment of the Funds received pursuant to this Agreement must fully comply with any restrictions imposed by law.

19. **NO ASSIGNMENT.** Organization may not assign any of its rights and duties under this Agreement without the prior written consent of LFUCG.

20. **NO THIRD PARTY RIGHTS.** This Agreement does not create a contractual relationship with or right of action in favor of a third party against either Organization or LFUCG.

21. **KENTUCKY LAW AND VENUE.** This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in the Circuit Court of Fayette County, Kentucky.

22. **AMENDMENTS.** By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Organization acknowledges that LFUCG may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

23. **NOTICE.** Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Organization:
Rufus Friday, Executive Director
PO Box 6
Lexington, Ky. 40588

For Government:
Jenifer Wuorenmaa (ARPA Project Manager)
Office of the Chief Administrative Officer

Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507

24. **WAIVER.** The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision.

25. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This Agreement shall replace any previous agreement between the parties on the same subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

SIGNATURE PAGE TO FOLLOW.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

BY: _____
Linda Gorton, Mayor

ATTEST:

Clerk of the Urban County Council

HOPE CENTER, INC.

BY: Rufus Friday 1.31.2023
Rufus Friday, Executive Director

COMMONWEALTH OF KENTUCKY)
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me this the _____ day of _____, 2023, by Rufus Friday, Executive Director of Hope Center, Inc., a Kentucky nonprofit organization.

Notary Public, State At Large, Kentucky

My Commission Expires: _____

Commission Number: _____

EXHIBIT "A"

Form Name:	American Rescue Plan - External Organization
Submission Time:	January 20, 2023 3:34 pm
Browser:	Chrome 109.0.0.0 / Windows
IP Address:	199.165.138.12
Unique ID:	1059645035
Location:	38.0936, -84.5009

American Rescue Plan Project Form - External Organization

Organization Legal Name	Hope Center Inc.
Organization Address	PO Box 6 Lexington, KY 40588
Tax Identification Number (TIN)	611107296
DUNS Number (If available)	02-173-3050
Organization Legal Status	Non Profit
SAM.gov Registered	Yes
Organization Contact Name	Jeff Crook
Organization Contact Email Address	jcrook@hopectr.org
Did your organization experience financial hardship resulting from the COVID-19 emergency?	Yes
If yes, please explain.	Our Organization experienced many additional expenses that were related to the pandemic. While some of the items were reimbursable through covid-specific grants, the majority of the expense were not reimbursed.

Project Details

Project Name	Hope Shelter Transitional Housing
Does this project include a capital expense?	Yes
What is the expected capital expenditure?	6240000
Project Council District	District 1
Place of Performance Address	360 W Loudon Avenue Lexington, KY 40508
Is the project in a qualified census tract (QCT)?	Yes

If in a QCT, please attach map.

https://lexingtonky-my.sharepoint.com/:b:/g/personal/nbrock_lexingtonky_gov/EUilcYmKuX9JuG56HW4tp9YB2_1SmaVwCwRSQeUUReUXpg?name=/HopeShelterTransitionalHousing_121709887_2022and2023SmallDDAsandQCTs_HUDUSER.pdf

This project is eligible for ARPA funding under the following Project Expenditure Category Group:

Project Expenditure Category 6.01 Provision of Government Services

Project Description Project will construct additional supportive, transitional shelter for men with mental illness and substance abuse issues. The new space would also be used for veterans who are homeless and in need of assistance. The project allows us to provide the supportive case management needed to assist our clients to return to self-sufficiency and more quickly transition to permanent housing by addressing the root causes of homelessness.

How does this project prioritize economic and racial equity and promote equitable outcomes? The project provides support for all homeless, at-risk, and low income residents in need of assistance regardless of racial or ethnic background.

Eligibility Citation from Final Rule LFUCG owns the facility - therefore allocating funding towards this project via Revenue Replacement.

Financial Information

Project Cost 6240000

Have you secured all funding required to complete the project? No

Please explain timeline and approach to raise remaining funds. The Hope Center is committed to the completion of this project.

The Hope Center is conducting a capital campaign to raise funds for the project and the efforts toward this are already underway.

The Hope Center also has grant requests in that would decrease the overall anticipated gap in funding. The most substantial of these requests has an anticipated award date in May 2023.

Whatever amount remains unfunded after these efforts will be financed by the Hope Center and paid back over time from the anticipated income produced by the additional beds added through the new space.

ARPA Funding Amount 2000000

Start Date for Expenditures Jan 01, 2023

End Date for Expenditures

Apr 30, 2024

Budget Narrative to Support Request

The Hope Center Transitional Housing addition will cost \$6,240,000. The project will be an addition connected to the existing shelter. The project will have two main components: Veterans Housing and Transitional Housing. The VA portion is partially funded by a \$1,550,000 VA Capital Grant, and the transitional housing section is partially funded by a \$2,000,000 ARPA grant and \$162,318 in ARPA non-profit capital grant funds through the LFUCG.

The total project has estimated site development costs of \$554,685, General Construction costs of \$5,005,441, Construction Management costs of \$336,388 and additional soft costs of \$343,486.

Attach a detailed budget, clearly noting ARPA funded budget items.

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For all personnel costs requested, will the time charged to the ARPA be:

None of the above

Additional Required Information

Organization's most recent financial audit. (A single audit is required if federal expenses exceed \$750,000).

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Articles of Incorporation

https://lexingtonky-my.sharepoint.com/:b:/g/personal/nbrock_lexingtonky_gov/EQ9qSG5jDr5BulYGdoDy1HQBXEcjMBx_MJNFkIhi44iGcA?name=/HopeShelterTransitionalHousing_121713821_ArticlesofIncorporation.pdf

Organizational Bylaws

https://lexingtonky-my.sharepoint.com/:b:/g/personal/nbrock_lexingtonky_gov/EUJn68p1krdltMZrrqbJw9YBiTpGW_r1Q6mggy7R3Ystlw?name=/HopeShelterTransitionalHousing_121714274_HopeCenterBylawsupdated3252010.pdf

Kentucky Secretary of State - proof of current active status

https://lexingtonky-my.sharepoint.com/:b:/g/personal/nbrock_lexingtonky_gov/ETL3Tq24PkFlmMIPoVTR5X0BRsaALM7O3V1Yz8Iz1J7vDA?name=/HopeShelterTransitionalHousing_121713832_CertificateofExistenceandGoodStanding.pdf

501(c)(3) or 501(c)(19) tax-exempt letter, if applicable

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Organizational Chart

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Board of Directors

Cathy Jacobs
Linda Ball
Bill Rouse
John McCarty
George Wallace
Kacy Allen-Bryant
Patrick Brewer
Karri Coburn-Clark
Brutus Clay III
Luther Deaton
Kyra Elzy
Matthew Galbraith
John Gahmann
Rick Griffith
Dr. Janie Heath
Mark Henderson
Louis Hillenmeyer III
Brendan Jacobson
Connie Joiner
Marques McMurry
Sharon Price
George Privett
Austin Simms
Guston Thomas
Jeff Zinger

Please attached any additional information to support the project

https://lexingtonky-my.sharepoint.com/:b:/g/personal/nbrock_lexingtonky_gov/EX2T3-iCsCNNmQLtP93tFT8BtPqofYItmuikUsupYYqWlIQ?name=/HopeShelterTransitionalHousing_121714165_TransitionalHousingAdditionPlanswithRendering.pdf

For ARPA Project Manager Use Only

Organization is on federal debarred list No

Council Approval Date Feb 17, 2022

ARPA Project Manager Approval Jenifer Wuorenmaa

Grants Approval Charlie Lanter

Finance Approval Erin Hensley

CAO Approval Sally Hamilton

EXHIBIT “B”

CERTIFICATION OF COMPLIANCE FOR EXPENDITURES USING FEDERAL FUNDS, INCLUDING THE AMERICAN RESCUE PLAN ACT

The Lexington-Fayette Urban County Government (“LFUCG”) may use Federal funding to pay for the goods and/or services that are the subject matter of the Memorandum of Agreement, executed _____, 2023. That Federal funding may include funds received by LFUCG under the American Rescue Plan Act of 2021. Expenditures using Federal funds require evidence of the contractor’s compliance with Federal law. Therefore, by the signature below of an authorized company representative, you certify that the information below is understood, agreed, and correct. Any misrepresentations may result in the termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims.

The contractor agrees and understands that the following conditions will apply to toward payment of goods and/or services referenced in this Agreement. The contractor also agrees and understands that if there is a conflict between the terms included elsewhere in this Agreement and the terms of this Exhibit B, then the terms of Exhibit B shall control. The contractor further certifies that it can and will comply with these conditions in the performance of this Agreement:

1. This Agreement may be governed in accordance with 2 CFR Part 200 and all other applicable Federal law and regulations and guidance issued by the U.S. Department of the Treasury.
2. Pursuant to 24 CFR § 85.43, this Agreement can be terminated if the contractor fails to comply with any term of the award. This Agreement may be terminated for convenience in accordance with 24 CFR § 85.44 upon written notice by LFUCG. Either party may terminate this Agreement with thirty (30) days written notice to the other party, in which case the Agreement shall terminate on the thirtieth day. In the event of termination, the contractor shall be entitled to that portion of total compensation due under this Agreement as the services rendered bears to the services required. However, if LFUCG suspects a breach of the terms of the Agreement and/or that the contractor is violating the terms of any applicable law governing the use of Federal funds, LFUCG may suspend the contractor’s ability to receive payment by giving thirty (30) days’ advance written notice. Further, either party may terminate this Agreement for cause shown with thirty (30) days written notice, which shall explain the party’s cause for the termination. If the parties do not reach a settlement before the end of the 30 days, then the Agreement shall terminate on the thirtieth day. In the event of a breach, LFUCG reserves the right to pursue any and all applicable legal, equitable, and/or administrative remedies against the contractor.
3. 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:

- (1) 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.

4. If fulfillment of the contract requires the contractor to employ mechanic's or laborers, the contractor further agrees that it can and will comply with the following:

- (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 a 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 a workweek.
- (2) Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (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 (1) of this section, in the sum of \$10 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 (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. LFUCG 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 (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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 (1) through (4) of this section.

5. The contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

6. The contractor shall report each violation to LFUCG and understands and agrees that LFUCG will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency Regional Office.

7. The contractor shall include these requirements in numerical paragraphs 5 and 6 in each subcontract exceeding \$100,000 financed in whole or in part with Federal funding.

8. The contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

9. The contractor shall report each violation to LFUCG and understands and agrees that LFUCG will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency Regional Office.

10. The contractor shall include these requirements in numerical paragraphs 8 and 9 in each subcontract exceeding \$100,000 financed in whole or in part with Federal funds.

11. The contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

12. The contractor shall report each violation to LFUCG and understands and agrees that LFUCG will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency regional office.

13. The contractor shall include these requirements in numerical paragraphs 11 and 12 in each subcontract exceeding \$100,000 financed in whole or in part with American Rescue Plan Act funds.

14. The contractor shall include this language in any subcontract it executes to fulfill the terms of this Agreement: “the sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with ‘Limited English Proficiency’ in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.”

15. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification 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. 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. The required certification is included here:

- a. 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.
- b. 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.

16. The contractor acknowledges and certifies that it has not been debarred or suspended and further acknowledges and agrees that it must comply with regulations regarding debarred or suspended entities in accordance with 24 CFR § 570.489(1). Funds may not be provided to excluded or disqualified persons.

17. The contractor agrees and certifies that to the greatest extent practicable, it will prefer the purchase, acquisition, and use of goods, products or materials produced in the United States, in conformity with 2 C.F.R. § 200.322.

18. The contractor agrees and certifies that all activities performed pursuant to any Agreement entered as a result of this Agreement, and all goods and services procured under that Agreement, shall comply with 2 C.F.R. § 200.216 (Prohibition on certain telecommunications and video surveillance services and equipment) and 2 C.F.R. 200 § 200.323 (Procurement of recovered materials), to the extent either section is applicable.

19. If this Agreement involves construction work for a project totaling \$10 million or more, then the contractor further agrees that all laborers and mechanics, etc., employed in the construction of the public facility project assisted with funds provided under this Agreement, whether employed by contractor, or contractor's contractors, or subcontractors, shall be paid wages complying with the Davis-Bacon Act (40 U.S.C. 3141-3144). Contractor agrees that all of contractor's contractors and subcontractors will pay laborers and mechanics the prevailing wage as determined by the Secretary of Labor and that said laborers and mechanics will be paid not less than once a week. The contractor agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. § 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The contractor further agrees to comply with the applicable provisions of the Contract

Work Hours and Safety Standards Act (40 U.S.C. Section 327-333), and the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.). Contractor further agrees that it will report all suspected or reported violations of any of the laws identified in this paragraph to LFUCG.

Rufus Friday

Signature

1.31.2023

Date