

PURCHASE OF SERVICE AGREEMENT

THIS Purchase of Service Agreement (hereinafter “Agreement”), is made and entered into on the ___ day of April 2022, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, (hereinafter “Government”), 200 East Main Street, Lexington, Kentucky 40507, on behalf of its Office of Homelessness Prevention and Intervention (hereinafter “Sponsor”), and **CLOUDBURST CONSULTING GROUP, INC.**, (hereinafter “Organization”) whose post office address is 8400 Corporate Drive, Suite 550, Landover, MD 20785-2238.

WITNESSETH

WHEREAS, the Government has been awarded federal funds from the U.S. Department of Treasury under the American Rescue Plan Act of 2021 (referred to hereinafter as “ARPA”) to provide for payment of eligible uses;

WHEREAS, ARPA provides that promoting long-term housing security for impacted and disproportionately impacted households and providing services for unhoused persons are eligible uses;

WHEREAS, the Sponsor coordinates services and programs for unhoused persons and those facing housing insecurity in Fayette County;

WHEREAS, demographic data from the Homeless Management Information System (HMIS) reveals there is an overrepresentation of African Americans and other minority groups who are unhoused, return to homelessness with more frequency or are facing housing insecurity in Fayette County;

WHEREAS, the Government believes that an effective local strategic plan to end homelessness should also address any racial disparities that contribute to housing insecurity;

WHEREAS, the Government, through its Sponsor, now seeks a racial and equity systems audit and analysis in order to deepen the impact of its local strategic plan to end homelessness in Fayette County;

WHEREAS, Organization has proposed an acceptable plan to perform this audit and analysis;

WHEREAS, the Government and Organization now desire to commemorate their understanding of the terms and conditions that shall govern the performance of this audit and analysis through a separate

written Agreement.

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants herein expressed, the sufficiency of which is hereby acknowledged, the Government and the Organization agree as follows:

1. This Agreement shall include the following additional documents, which are attached hereto and incorporated by reference as if fully stated herein:

Request for Proposal (RFP) No. 37-2021, attached as **Exhibit A**
Organization's Response to RFP No. 37-2021, attached as **Exhibit B**

In the event of a conflict between and among the provisions of these documents the provisions of this Agreement shall prevail, followed by Exhibit A, then Exhibit B.

2. The term of this Agreement shall be for one (1) year, effective **April 15, 2022**, and terminating **April 14, 2023**.
3. This Agreement will be construed pursuant to the laws of the Commonwealth of Kentucky. However, the parties also mutually understand and agree that this Agreement is funded with federal funds and therefore the performance of any services under this Agreement may be governed by 2 CFR Part 200 and all other applicable federal law and regulations and guidance issued by the U.S. Department of the Treasury.
4. Pursuant to 24 CFR 85.43, this Agreement can be terminated if Organization fails to comply with any term of the award. This Agreement may be terminated by the Government through the Mayor, or by the Mayor's designee. This Agreement may be terminated for convenience in accordance with 24 CFR 85.44 upon written notice by the Government. 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. Either party may also terminate this Agreement for good cause shown with forty-five (45) 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 45 days, then the Agreement shall terminate on the forty-fifth day. In the event of termination, the Organization shall be entitled to that portion of total compensation due under this Agreement as the services rendered bears to the services

required.

5. All Funds, as defined later in this Agreement, paid pursuant to this Agreement shall be used exclusively for the services set forth in Exhibit B and for no other purpose. Any alteration in the nature of such services and duties constitutes an amendment to this Agreement and must be in writing signed by both parties.
6. The relationship created by this Agreement is that of a contractor, and nothing contained herein will be construed to be inconsistent with this relationship.
7. This Agreement, the Exhibits, and any addendums incorporated herein, constitutes the entire Agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid and binding; and this Agreement may not be enlarged, modified or altered except in writing signed by the parties and endorsed hereon.
8. The section headings have been included in this Agreement solely for the convenience of the parties and are not to be deemed a part of this Agreement or material to its construction.
9. Should any provision of this Agreement be deemed invalid or unenforceable, it will not affect the other provisions of this Agreement, and this Agreement will be construed in all respects as if the invalid or unenforceable provisions were omitted.
10. Notice – Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Organization: Cloudburst Consulting Group
8400 Corporate Drive,
Suite 550
Landover, MD 20785-
2238
Attn: Michelle Hayes,
President

For Government: Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attn: Polly Ruddick, Director of Office of Homelessness Prevention &
Intervention

11. **Rights and obligations of the Government:**

- (a) The Government shall pay Organization an amount not to exceed the sum of **Eighty-Seven Thousand Three-hundred and Eighty-Five Dollars (\$87,385.00)** (“Funds”) for the services identified in Exhibit B.
- (b) The Government may maintain oversight to ensure that Organization performs in accordance with the terms, conditions, and specifications of this Agreement.
- (c) Government may designate such persons as may be necessary to monitor and evaluate the services rendered by the Organization.
- (d) The Government, its agents and employees, shall, at all reasonable times, have unrestricted access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of Organization, nor to constitute the Organization as an agent of the Government.

12. **Rights and obligations of the Organization:**

- (a) The Organization shall invoice the Government on a quarterly basis for the reimbursement of actual expenditures incurred.
- (b) Organization shall cooperate fully with the Government in providing any information that Government needs to fulfill the Government’s reporting obligations to the U.S. Department of the Treasury.
- (c) Organization shall, on such forms as the Sponsor shall provide, submit to Sponsor an end of the program report and financial statement which summarize activities regarding the services enumerated in Exhibit B.
- (d) Organization shall indemnify, save, hold harmless and defend the Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against 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 negligent performance 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 the Organization; and (b) not caused solely by the active negligence or willful misconduct of the Government. The parties understand and agree that the Organization's obligation to defend the Government 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 Government, which approval shall not be unreasonably withheld. The parties also understand and agree that the Organization's 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 Government, and damage to, or destruction of, any property, including the property of Government. This provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement. Organization understands that Government is a political subdivision of the Commonwealth of Kentucky and acknowledges and agrees that the Government is unable to provide indemnity or otherwise save, hold harmless, or defend the Organization in any manner.

- (e) Books of accounts shall be kept by the Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of the Organization. The books of accounts, together with all bonds, notes, bills, letters and

other writings belonging to the Organization, shall be maintained at the principal place of business of the Organization as set forth in this Agreement. Government shall have free and complete access to the books, papers and affairs of the Organization, that relate to the performance of this Agreement, at an agreeable time, and if it desires, it may have the books and papers of the Organization, that relate to the performance of this Agreement, audited and examined by auditors, accountants or attorneys. Any examination shall be at the expense of the Government.

- (f) Organization shall adopt 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 submitted to Sponsor for review within thirty (30) days of the execution of this Agreement.
- (g) Organization will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Organization 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:
 - i. 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. Organization 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.
 - ii. Organization 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.

- iii. Organization 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 Organization's legal duty to furnish information.
- iv. Organization 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 Organization's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. Organization 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.
- vi. Organization 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.

- vii. Organization's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement 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.
 - viii. Organization will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) 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. Organization 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.
 - ix. Provided, however, that in the event Organization becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Organization may request the United States to enter into such litigation to protect the interests of the United States.
- (h) If fulfillment of the Agreement requires the Organization to employ mechanic's or laborers, the Organization further agrees and herein certifies that it can and will comply with the following:
- i. Overtime requirements: Neither the Organization nor any 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.

- ii. Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (i) of this section, the Organization 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 (i) 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 (i) of this section.
- iii. Withholding for unpaid wages and liquidated damages. Government 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 Organization or any 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 (ii) of this section.

- iv. Subcontracts. Organization and any subcontractors shall insert in any subcontracts the clauses set forth in paragraph (i) through (iv) 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 (i) through (iv) of this section.
- (i) Organization 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. Organization shall report each violation to the Government and understands and agrees that the Government will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency Regional Office. Organization shall include the requirements in this paragraph in each subcontract exceeding \$100,000 financed in whole or in part with American Rescue Plan Act funding.
- (j) Organization 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. Organization shall report each violation to the Government and understands and agrees that the Government will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency Regional Office. Organization shall include the requirements in this paragraph in each subcontract exceeding \$100,000 financed in whole or in part with American Rescue Plan Act funds.
- (k) Organization 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. Organization shall report each violation to the Government and understands and agrees that the Government will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency regional office. Organization shall include the requirements in this paragraph in each subcontract exceeding \$100,000 financed in whole or in part with American Rescue Plan Act funds.

- (l) Organization shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
- (m) Organization agrees that to the greatest extent practicable, it will prefer the purchase, acquisition, and use of goods, products or materials produced in the United States.
- (n) The Organization and any 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.
- (o) By signing this Agreement, the undersigned representative of the Organization hereby certifies to that the Organization has not been debarred or suspended and further acknowledges and agrees that Organization must comply with regulations regarding debarred or suspended entities in accordance with 24 CFR 570.489(l). Organization understands and agrees that funds under the American Rescue Plan Act may not be provided to excluded or disqualified persons.
- (p) By signing this Agreement, the undersigned representative of the Organization hereby certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned or on behalf of the Organization, 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. 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. Organization further agrees that it shall require that the language of this certification be included in the award documents for all subcontractors. Organization further understands that 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.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date above written.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

Cloudburst Consulting Group

BY: _____
Linda Gorton, Mayor

BY: _____
Michelle Hayes, President

ATTEST:
