

**CITY OF COSTA MESA
SUBRECIPIENT AGREEMENT
WITH TRELLIS INTERNATIONAL
FOR HOUSING RELATED SPECIAL SERVICES
FOR QUALIFYING POPULATIONS – TRANSPORTATION
SERVICES HOUSING SUPPORT (WRAP AROUND SERVICES)**

THIS SUBRECIPIENT AGREEMENT (the “Agreement”) is made and entered into as of July 1st, 2023 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation of the State of California whose business address is 77 Fair Drive, Costa Mesa, California 92626 (the “City”) and TRELLIS INTERNATIONAL, a California nonprofit corporations (the “Subrecipient”).

WHEREAS, on March 11, 2021, President Joseph R. Biden signed into law the American Rescue Plan Act of 2021 (“ARPA”); and

WHEREAS, to address the need for homelessness assistance and supportive services, \$5 billion in federal ARPA funds were appropriated and administered through the federal HOME Investment Partnerships Program (“HOME”); and

WHEREAS, on September 13, 2021, HUD published Notice CPD-21-10 entitled, “Requirements for the Use of Funds in the HOME-American Rescue Plan Program which establishes the requirements for the use of HOME-ARP funds (the “Notice CPD-21-10”) ; and

WHEREAS, on April 8, 2021, the US Department of Housing and Urban Development (“HUD”) allocated funds to grantees using the HOME formula established in 24 CFR 92.5 and 92.60; and

WHEREAS, City was allocated \$1,816.742.00 (“HOME-ARP Funds”) for housing related supported services for qualifying populations; and

WHEREAS, the City seeks to address the needs and gaps identified in the City’s HOME-ARP Allocation Plan approved by HUD on January 23, 2023; and

WHEREAS, supportive services are identified as one of four activities eligible for HOME-ARP funding including: (1) services identified in section 401(29) of the McKinney Vento Homeless Assistance Act (42 USC 11360(29), (2) homelessness prevention services, and (3) housing counseling services.

WHEREAS, the Costa Mesa City Council has authorized the award of HOME-ARP funds to Subrecipient for the purpose of providing help to vulnerable populations re-engage and develop skills, relationships, and habits to allow transition back to work and address mental health and substance abuse issues and supporting transportation services (“Program”).

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants set forth herein, the City and Subrecipient agree, for themselves and for their respective successors and assigns as follows:

SECTION 1: GENERAL PROGRAM DESCRIPTION; ROLES & RESPONSIBILITIES

1.1 Program Description.

As further described herein and in the City's Scope of Work, attached hereto as Exhibit "A," and Subrecipient's Proposal, attached hereto as Exhibit "B," both of which are incorporated herein, the goal of the Program is to provide housing related supportive services to qualifying populations who are current residents of Costa Mesa, or who have strong community ties to Costa Mesa to attain safe, stable, and sanitary housing in order to prevent homelessness or housing insecurity.

1.2 City Role & Responsibilities

The City is responsible to HUD for the oversight of the Program and compliance with applicable federal requirements, including the HOME requirements outlined in 24 CFR Part 92. This will include, but not be limited to, the following:

1.2.1 Program Design. Furnishing the Subrecipient with the Scope of Work and any other Program requirements, including any future changes to HOME regulations or HOME Program guidance issued by HUD;

1.2.2 Environmental Review. Completing necessary environmental reviews and/or determinations pursuant to 24 CFR 92.352 and 24 CFR 58;

1.2.3 IDIS Setup, Drawdown, and Completion. Entering project setup, drawdown, and completion information along with associated reporting in HUD's Integrated Disbursement and Information System ("IDIS"); and

1.2.4 Subrecipient Monitoring. Completing remote and on-site monitoring reviews of the Subrecipient's operation of the program.

1.3 Subrecipient Role and Responsibilities

Subrecipient is responsible for the implementation of the Program, including interaction with applicants to the Program and program recipients. In all cases, Subrecipient will implement the Program in compliance with the City's requirements and all applicable federal requirements including Notice CPD-21-10. In no case will the Subrecipient be considered the "responsible entity" for environmental reviews required under 24 CFR 58. In this role Subrecipient will:

1.3.1 Marketing. Market and advertise the Program pursuant to the HUD's Affirmative Fair Housing Marketing Plan and in accordance with the requirements in 24

CFR 92.351, including the requirements to: (i) identify those portions of the population of the City that are least likely to apply, (ii) establish specific marketing actions (e.g. advertising in specialty publications, native languages, etc.) intended to reach such populations, and (iii) maintain records of the results of such activities;

1.3.2 Application Intake. Develop needed application materials and establish and implement an application process in accordance with the City's requirements;

1.3.3 Screening. Review individual applications, including income determinations, in accordance with the City's requirements and the HOME requirements in 24 CFR Part 92 to establish applicant's eligibility for the Program and notify applicants of their status.

1.3.4 Program Orientation. Provide individual orientations to recipients and participants explaining the Program requirements

1.3.5 Inspections. Where applicable, inspect units to ensure that such units meet the Program's property standards, including but not limited to conducting visual assessments of potential lead-based paint hazards in any properties constructed prior to 1978 in accordance with 24 CFR Part 35;

1.3.6 Program Policies. Apply the City's requirements identified in the Scope of Work, including any updates thereto provided by the City pursuant to the notice provisions in Section 5.2 of this Agreement, ensuring that individual awards meet all HOME and Program requirements; and

1.3.7 Management of Program Recipient and Property Participants. Address questions, concerns, or disputes between program recipients and property participants (landlords), provide clarifications of the City's requirements, federal requirements, and HOME requirements, and otherwise work with program recipients and other participants to ensure effective and compliant delivery of assistance.

SECTION 2: USE AND DISBURSEMENT OF HOME FUNDS

2.1 HOME-ARP Award

As part of this Agreement, the City is providing up to a maximum of \$29,640.00 in HOME-ARP funding for program and administrative expenses as identified in the Scope of Work for FY 2023-24. In the event the term is extended, the City shall provide up to a maximum of \$87,952.00 in annual HOME-ARP funding. HOME-ARP funding shall be used for the Program more specifically described in Section 1.1, in accordance with federal requirements, this Agreement, and the City's requirements, to the extent applicable.

2.2 Term

The term of this Agreement shall begin upon July 1, 2023 and continue for a period of one (1) year ending on June 30, 2024. The term of the Agreement may be extended up to four (4) one (1) year renewal terms upon mutual written agreement of the parties, subject to the availability and/or allocation of HOME-ARP funds for the Program. Upon expiration of this Agreement, the Subrecipient shall have thirty (30) days to make the final requests for reimbursement. The recordkeeping and reporting requirements of Sections 3.6 and 3.8 respectively, remain in effect in accordance with the terms of those sections.

2.3 Anticipated Productions

The City and Subrecipient anticipate at least 100 eligible unique individuals or families will receive assistance under this Agreement.

2.4 Project Completion Deadlines

The Subrecipient must provide the City with all necessary project information (i.e. specific recipient information) for entry into IDIS within sixty (60) days of the last payment made pursuant to this Agreement.

2.5 Program Income

City and Subrecipient acknowledge and agree that the design of Program does not anticipate the receipt of "**Program Income**," as defined in 24 CFR 92.2, by the Subrecipient. Notwithstanding, in the event that any Program Income is received by the Subrecipient, Subrecipient will promptly remit same to the City.

2.6 Disbursement of Funds

Subrecipient must remit disbursement requests (or, in the case where no reimbursement is due, a report explaining inactivity) at least quarterly and may request payments no more than once per month. In all cases, Subrecipient is prohibited from requesting HOME-ARP funds from the City until such funds are needed to pay HOME-ARP eligible costs. Requests for disbursements are limited to the amount needed at the time of such request.

2.6.1 Reimbursement Basis. The City will provide HOME-ARP funds to the Subrecipient for Program costs on a quarterly basis subject to, and upon receipt and approval of, (i) an original invoice and (ii) true copies of other receipts, agreements, or other documentation supporting and evidencing how the HOME-ARP funds have been expended during the applicable quarter. Funds will be provided on a reimbursement basis only.

2.6.2 Project Costs. To request payment of allowable costs (i.e., rental or utility assistance), Subrecipient shall submit copies of records demonstrating payment by the subrecipient (e.g. copies of checks).

All requests for project specific soft costs must be supported by (i) time-sheet documentation for any costs associated with Subrecipient staff, (ii) invoices for any third-party costs, and/or (iii) other source documentation (e.g. receipts and mileage logs for travel expenses, etc.)

2.6.3 Administrative Costs. Administrative costs of the Program are eligible only under general management oversight and coordination at 24 CFR 92.207(a), except that the costs of inspecting the housing and determining the income eligibility of the family are eligible as costs of the Program. Requests for payment of eligible administrative costs must be supported by time-sheet documentation for any costs associated with Subrecipient staff, invoices for any third-party costs, and/or similar documentation. Any travel expenses charged (e.g. mileage, per diems, etc.) must be consistent with the travel requirements listed in 2 CFR 200.474.

2.6.4 Final Payment. Subrecipient shall submit a final payment request no later than thirty (30) days following the end of the Term of this Agreement, consistent with Section 2.2 of this Agreement.

SECTION 3: ADMINISTRATIVE AND PROGRAM REQUIREMENTS

3.1 Applicability of Uniform Administrative Requirements

In performing under this Agreement, the requirements of 2 CFR Part 200 apply to the Subrecipient, except for the following provisions: § 200.306, § 200.307, § 200.311 (except as provided in 24 CFR 92.257), § 200.312, § 200.329, § 200.333, and § 200.334. The provisions of 2 CFR 200.305 apply as modified by 24 CFR 92.502(c). If there is a conflict between definitions in 2 CFR 200 and 24 CFR Part 92, the definitions in 24 CFR Part 92 govern. While not intended to be an exhaustive list, Subrecipient acknowledges that the requirements of 2 CFR 200 include, inter alia, compliance with:

3.1.1 Procurement. Standards and procedures consistent with 2 CFR 200.318 through 200.326 related to the procurement of property or services with HOME-ARP funds.

3.1.2 Audit. The requirement under 2 CFR 200.501 that the Subrecipient must obtain a single-or program-specific audit if, during any given Subrecipient fiscal year, Subrecipient expends more than \$750,000 in federal funds; and

3.1.3 Cost Principles. The cost principles included in 2 CFR 200 Subpart F, including that any costs charged to HOME-ARP be supported by adequate documentation, allocable to the program, necessary, and reasonable.

3.2 Administrative Funding

Subject to any funding limit provided in Section 2.1, Subrecipient may use HOME-ARP funds for administrative expenses associated with operating the Program. Eligible

administrative costs include costs associated with activities described in the general management oversight and coordination requirements at 24 CFR 92.207(a) to the extent that such activities are allowable under this Agreement. These include, but may not be limited to, costs associated with coordinating and overseeing the Program; advertising and promoting the Program, including affirmatively marketing the Program pursuant to the requirements of 24 CFR 92.351; maintaining appropriate Program records, including financial records, and submitting progress, financial, and other reporting to the City, taking applications, conducting intake interviews, and otherwise processing applications that do not proceed; and conducting required unit inspections.

3.2.1 Treatment of Income Determination and Inspection Costs. Pursuant to 24 CFR 92.209(a), the Subrecipient may also use HOME-ARP project funding for its project-specific soft costs associated with determining the income eligibility and assistance amount for assisted tenants and completing property inspections of units occupied by assisted tenants.

Alternatively, the costs associated with determining the income eligibility and assistance amount for assisted tenants and completing property inspections of units occupied by assisted tenants, in whole or to the extent they exceed the limit established herein, may be charged as an administrative cost, provided that in no case may a single item of cost be charged both as an administrative expense and as a project-related soft cost as provided for herein.

3.3. Reversion of Assets

Upon receipt of the final payment by the City under this Agreement and after payment by the Subrecipient of any final eligible costs under this Agreement, the Subrecipient must transfer to the City any remaining HOME-ARP funds on hand and any accounts receivable attributable to the use of HOME-ARP funds to the City.

3.4 Compliance with Other Federal Requirements.

Subrecipient must comply with all applicable federal requirements, including those listed in 24 CFR Part 92, Subpart H and 24 CFR Part 5, Subpart A, and the nondiscrimination requirements of section 282 of the Act, as amended. This includes, but is not limited to, compliance with:

3.4.1 Equal Opportunity and Fair Housing. In accordance with 24 CFR 92.351, no person shall on the ground of race, color, religion, sex, disability, familial status, national origin, or age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any Program activity funded in whole or in part from HOME funds. In addition, Subrecipient shall develop and operate the Program in accordance with the requirement contained in 24 CFR 5.105, including but not limited to the following requirements:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958 B1963 Comp., P. 652 and 3 CFR 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(b) The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S. C. 6101-07) and implementing Regulations at 24 CFR Part 146;

(c) The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S. C. 794) and implementing regulations at 24 CFR Part 8;

(d) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S. C. 1701u) and implementing regulations at 24 CFR Part 135;

(e) The requirements of Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;

(f) The requirements of 24 CFR 92.351, 2 CFR 200. 321, Executive Orders 11625, as amended, and 12432 (concerning Minority Business Enterprise), and 12138, as amended (concerning Women's Business Enterprise); and

(g) The requirements of 24 CFR 5.105(a)(2) requiring that HUD- assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting subrecipients, owners, developers, or their agents from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.

3.4.2 Lobbying Disclosure Requirements. In accordance with the requirements of 24 CFR Part 87, the Subrecipient certifies, to the best of its knowledge and belief, that:

(a) 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 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;

(b) 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 Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The Subrecipient 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 such lower-tier parties shall certify and disclose accordingly; and

(d) Subrecipient acknowledges 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.

3.4.3 Drug-Free Workplace. The drug-free workplace requirements of 2 CFR Part 2429 and City's Council Policy No. 100-5 attached hereto as Exhibit "C" and incorporated herein;

3.4.4 Debarred or Suspended Entities. By signing this Agreement, Subrecipient certifies that it is not presently listed by a federal agency as debarred, suspended, or proposed for debarment from any federal contract activity. If during the term of this Agreement this information changes, Subrecipient shall notify City without delay. Such notice shall contain all relevant particulars of any debarment, suspension, or proposed debarment. Further, in carrying out its responsibilities hereunder, Subrecipient will not employ, contract with, or otherwise make use of subcontractors, service providers, Subrecipients, or any other party that is debarred, suspended, or proposed for debarment from any federal contract activity.

3.4.4 Environmental Review. While the City is responsible for environmental reviews and determinations under this Agreement, Subrecipient will cooperate and assist in documenting the environmental reviews and determinations under this Agreement, Subrecipient will cooperate and assist in documenting the environmental status of each assisted unit, including but not limited to the initial preparation of an *Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5* checklist. In no case will Subrecipient execute an agreement with respect to a specific unit to be assisted without notification from the City that the project is either exempt from environmental review or that needed reviews have been completed.

3.4.5 Lead Based Paint. Subrecipient will ensure that all assisted units in properties which were originally constructed prior to 1978 pass a visual assessment pursuant to the requirements of 24 CFR 35.

3.4.6 Conflict of Interest. Pursuant to 24 CFR 92.356, no employee, agent, Subrecipient, officer, or elected official or appointed official of the City or the Subrecipient, Individually know as a “**Covered Person**,” that exercises or has exercised any functions or responsibilities with respect to HOME-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to HOME-ARP assisted activities, is eligible to receive HOME-ARP assistance under the Program or to have a financial interest or financial interest or financial benefit in any contrast, subcontract, or other agreement with respect to the HOME-ARP funded activities contemplated in this Agreement, or the proceeds from such activities. This provision shall apply to both Covered Persons and those with whom they have business or immediate, family ties, during their tenure with the City or Subrecipient or for one year thereafter. Immediate family ties include (whether by blood, marriage, or adoption) the spouse, parent (including a stepparent), a child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a Covered Person. In the event a Covered Person, or a person with whom the Covered Person has business or family ties, is otherwise eligible and applies to the Program, Subrecipient will immediately notify the City. City, in its sole discretion, may pursue an exception from HUD under the provisions of 24 CFR 92.356(d) to allow participation notwithstanding the conflict of interest. Only HUD may grant such an exception; neither the City nor the Subrecipient may grant such an exception on its own. Moreover, the City and Subrecipient shall comply with the conflict-of-interest requirements in 2 CFR 200.317 and 2 CFR 200.318 in the procurement of property and services.

3.4.7 Subrecipient Activities. Subrecipient will comply with the reasonable rate of compensation requirements in accordance with 24 CFR 92.358.

3.4.8 Faith-Based Organizations. Faith-based organizations are eligible to participate in the HOME-ARP program on the same basis as any other organization but must comply with the requirements of 24 CFR 5.109.

3.5. VAWA Regulations

The City and Subrecipient both acknowledge and agree that each are subject to the requirements of 24 CFR 92.359 and 24 CFR 5, Subpart L, which implements provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA). Subrecipient also agrees to follow and implement the applicable VAWA requirements required by 24 CFR 92.359(g), for all applicants to the Program, and all TBRA recipients for the period that tenant based rental assistance is provided. Moreover, the Subrecipient agrees that all leases that are approved by the Subrecipient shall contain a VAWA lease term/addendum, as described in 24 CFR 92.359(e).

3.6 Recordkeeping

Subrecipient shall maintain detained records of all its activities under this Agreement, including records on all persons served pursuant to this Agreement, and all required Program records applicable to TBRA assistance that are described in 24 CFR 92.508.

Representatives of the City, HUD (including HUD's Office of Inspector General), the Comptroller General of the United States (aka the U.S. Government Accountability Office or "**GAO**"), or their designees may examine any records or information accumulated pursuant to this Agreement. All confidential information shall be treated as such by all aforementioned City, HUD, or GAO representatives or designees. Subrecipient will maintain administrative and financial records as required by 24 CFR 92.508, applicable to the activities to be carried out under this Agreement, including but not necessarily limited to:

3.6.1 General Administrative and Financial Records.

(a) Information about contractors, vendors, and other service providers to include, but not necessarily be limited to, verification of non-department and suspension, verification of qualifications and experience, legally binding contracts and agreements, invoices and payment records, and related correspondence (see 24 CFR Part 23 and 2 CFR Part 2424);

(b) Financial information including, but not necessarily limited to, audits and related correspondence, accounting and financial records, indirect cost analyses, and internal controls and reconciliations;

(c) Financial records identifying the source and use of funds for each person assisted under the Program pursuant to this Agreement, as well as underlying documentation (e.g. timesheet records, invoices/receipts, proof of payment, etc.) for all costs charged to HOME-ARP;

(d) Records demonstrating compliance with the Uniform Administrative Requirements of 2 CFR 200, as applicable.

3.6.2 HOME-ARP Recipients Records. HOME-ARP recipient records in accordance with 24 CFR 92.508(a)(3) that demonstrate that each HOME-ARP assisted tenant met the requirements of the HOME-ARP program, including but not limited to:

(a) Full descriptions of each tenant or family assisted with Program funds, including the location (address of each unit) and the form of TBRA assistance;

(b) The source and application of funds for each HOME-ARP recipient, including supporting documentation in accordance with 2 CFR 200.302; and records to document the eligibility and permissibility of the HOME-ARP recipient's costs;

(c) Records, consistent with the Program Guidelines, demonstrating that each HOME-ARP recipient meets the Program's standards;

(d) Records demonstrating that each assisted recipient or family is income eligible in accordance with 24 CFR 92.203, as modified by Notice CPD-21-10, to the extent applicable;

(e) Copies of all agreements between the Subrecipient and HOME-ARP recipients.

3.6.3 Records of Other Federal Requirements. Other records that include documentation of compliance with other federal requirements in accordance with 24 CFR 92.508 that includes the following requirements to the extent applicable to the Program:

(a) Documentation of Subrecipient's efforts to affirmatively further fair housing, including both marketing efforts and records on the extent to which each racial and ethnic group and single-headed households (by gender of household head) applied for, participated in, or benefited from the Program;

(b) Records concerning lead-based paint in accordance with 24 CFR Part 35;

(c) Records related to compliance with the VAWA provisions of 24 CFR 92.359, including but not limited to evidence proper notices were provided to applicants and TBRA recipients and summaries of requests for VAWA protections and actions taken;

(d) Records supporting any requests for exceptions to the conflict of interest provisions in accordance with 24 CFR 92.356; and

(e) Records required by Notice CPD-21-10 for the waivers and suspensions used by the Program, to the extent applicable.

3.7 Record Retention

All Program records shall be maintained by the Subrecipient for a minimum of five (5) years beyond the final payment under this Agreement. Notwithstanding, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have commenced before the expiration of the retention periods outlined, such records must be retained until completion of the actions and resolution of all issues or the expiration of the retention period, whichever occurs later.

3.8 Reporting Requirements

The Subrecipient agrees to submit any and all reports required by the City or HUD within thirty (30) days of the City or HUD's request. Regular quarterly reports including updates on program implementation are due to the City within fifteen (15) days of the end of each quarter on October 15, January 15, April 15 and July 15 during the term of this Agreement. Using forms approved by the City, such reports may be submitted either in hard-copy or electronically, and will include information on the marketing and startup of the Program, number of applications received, challenges or concerns about implementation, and estimates of the timing of upcoming commitments and expenditures of HOME-ARP funds.

The City reserves the right to unilaterally alter, supplement, or otherwise modify the frequency, content, or form of delivery of required reports as needed to maintain adequate

oversight of the Program, address changes to HOME-ARP regulations, or to address findings related to noncompliance by the Subrecipient.

SECTION 4: DEFAULT, DEMEDIES, AND TERMINATION

4.1. Default

The following are considered a default by the Subrecipient under this Agreement:

- (a) Subrecipient fails, in any manner, to fully perform and carry out any of the terms, covenants, and conditions of this Agreement;
- (b) Subrecipient refuses or fails to proceed with the work and tasks contemplated in this Agreement in accordance with such diligence as will ensure their completion within the time fixed by the schedule set forth in this Agreement;
- (c) Material noncompliance with any applicable HOME-ARP regulatory requirements in 24 CFR Part 92 or any other applicable federal requirements; or any applicable State or local law, regulation, ordinance, or requirement related to the Program; and
- (d) Dissolution or other termination of existence; insolvency; forfeiture of right to do business in the State of California or business failure; appointment of a receiver of any part of the Subrecipient's property; the calling of any meetings of, or the assignment for the benefit of, creditors of the Subrecipient; or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the Subrecipient which are not dismissed within 60 days.

4.2. Remedies

In the event of default by Subrecipient hereunder, which is not cured within ten (10) days of the mailing of written notice by the City as described in Section 5.4., the City may seek any combination of the following remedies:

- (a) Suspend payments under this Agreement pending the correction of a default or deficiency;
- (b) Disallow part or all of any of the Program or cost hereunder which is not in compliance with this Agreement, the City's requirements, applicable federal requirements, or HOME-ARP regulations;
- (c) Suspend, in whole or part, this Agreement pending correction; or, following any cure period provided by the City, terminate this Agreement for cause as provided in 2 CFR 200.339;

(d) Recommend to HUD that it initiate suspension or debarment proceedings as authorized under 2 CFR Part 180;

(e) Take any other action available under 2 CFR 200.338;

(f) Require the repayment of previously disbursed HOME-ARP funds for questioned costs;

(g) Require Subrecipient to participate in training or technical assistance; and

(h) Make use of any other remedies that may be legally available to the City.

4.3 Termination for Convenience

In addition to any termination for cause provided herein, this Agreement may be terminated for convenience by the City upon ten (10) days written notice. In the event of termination under this section, Subrecipient shall suspend the collection of applications and execution of agreements with Program recipients following receipt of such notice. Subrecipient shall further provide final reporting and a final request for reimbursement within sixty (60) days of any termination under this section. Subrecipient will have no claim of payment or claim of benefit for any cancelled activities undertaken under this Agreement and shall not be entitled to, and hereby waives, all claims for lost profits and all other damages and expenses.

SECTION 5: ADDITIONAL PROVISIONS

5.1 Fees to Program Recipients Prohibited

Subrecipient is prohibited from charging application or other fees for the purpose of covering costs of administering the Program.

5.2. Notice

Except in the case of a notice of default, which must be delivered via mail or delivery service, the City may issue written notices as required or anticipated herein to the Subrecipient via email, mail, delivery service, or in person as may be appropriate. Notices delivered via mail or delivery service shall be deemed delivered two (2) days after being placed in the United States mail or delivery service, postage pre-paid, addressed to the Subrecipient as follows:

Trellis International
711 W. 17th Street, Unit E-5
Costa Mesa, CA 92627
Attn: Ian Stevenson

Notices due to the City shall be in writing and may be delivered via email, mail, delivery service, or in person as may be appropriate. Notwithstanding, a notice of default to the City must be delivered via certified mail with return receipt requested and shall be deemed delivered upon signature of the City's representative identified below. Notices to the CITY should be addressed as follows:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Mikelle Daily, Grant Administrator

5.3 City Liability

The City shall have no liability except as specifically provided in this Agreement. The City, by execution of this Agreement assumes no liability for damages caused to persons or property by reason of Subrecipient providing goods or services herein or for injury to any employee, agent or subcontractor of the Subrecipient performing under this Agreement.

5.4 Indemnification

Subrecipient shall indemnify, defend and hold free and harmless City, its elected officials officers, employees, agents, and volunteers from and against any and all claims, demands, actions, suits or other legal proceedings brought against City, its elected officials, officers, employees, agents and volunteers, arising out of or relating to the performance of this Agreement by Subrecipient, its officers, employees, agents, volunteers and/or subcontractors.

Subrecipient shall further indemnify, defend, and hold harmless City, its elected officials, officers, employees, agents, and volunteers from and against any and all claims, demands, suits, actions or proceedings arising from or relating to any failure of Subrecipient to comply with any applicable laws or regulations.

5.5 Insurance

5.5.1 Minimum Scope and Limits of Insurance. Subrecipient shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

(a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less and One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

(b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.

(c) Workers' compensation insurance as required by the State of California. Subrecipient agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Subrecipient for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

(d) Professional error and omissions ("E &O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Subrecipient shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.5.2 Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

(a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to liability arising out of activities performed by or on behalf of the Subrecipient pursuant to its contract with the City; products and completed operations of the Subrecipient; premises owned, occupied or used by the Subrecipient; automobiles owned, leased, hired, or borrowed by the Subrecipient."

(b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."

(c) Other Insurance: "The Subrecipient's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

(d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.

(e) The Subrecipient's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.5.3 Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the name insured can satisfy any such deductible or self-insured retention.

5.5.4 Certificates of Insurance. Subrecipient shall provide to City certificates of insurance showing the insurance coverage and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5.5 Non-Limiting. Nothing in this section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Subrecipient may be held responsible for payments of damages to persons or property.

5.8 Compliance with all Laws

Subrecipient shall comply with all applicable federal, state and local laws and regulations in the performance of this Agreement and shall keep in effect any and all licenses, permits, notices and certificates as are required thereby. Subrecipient shall further comply with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State, and local laws and ordinances applicable to the services required under this Agreement.

5.9 Independence of Subrecipient

Nothing in this Agreement shall be deemed or construed to represent that Subrecipient, or any of Subrecipient's employees or agents, are the agents, representatives, or employees of the City. Subrecipient acknowledges that it is an independent contractor in its performance under this Agreement. Anything in this Agreement that provides the City with the right to direct Subrecipient in its performance of its obligations under this Agreement is solely for purposes of compliance with local, state and federal regulations.

5.10 Binding Effect; Assignment

This Agreement is binding on the City and Subrecipient, and their respective successors and assigns. Subrecipient shall not assign or transfer its interest in this Agreement without the prior written approval of the City which shall be in the City's sole and exclusive discretion.

5.11 Amendments

This Agreement may be modified or amended only if the amendment is made in writing and is signed by both parties. Notwithstanding, in the event that (i) HUD imposes new or modified requirements in the HOME-ARP Program through regulation, administrative notice, publication, or other notice, or (ii) HUD specifically identifies violations of HOME-ARP program requirements pertaining to this Agreement or the Program undertaken hereunder, Subrecipient agrees to comply with any new or modified requirements to ensure this Agreement and the activities hereunder remain in or are brought into compliance with such requirements. The City shall provide prompt notice to the Subrecipient of any such modifications. Subrecipient further agrees to execute an amendment to modify the terms of this Agreement in such manner as necessary to formally reflect and implement new HOME requirements or correct identified deficiencies.

5.12 Interpretation; Entire Agreement

This Agreement is the sole agreement between the two parties, and no prior or subsequent discussions, negotiations, or agreements, whether verbally or in writing, shall be merged with this Agreement. Any questions or dispute regarding the interpretation of the terms of this Agreement shall be decided by the City. The City's decision on any dispute under this Agreement, which shall be decided by the City. The City's decision on any dispute under this Agreement, which shall be furnished in a manner of its choosing, shall be final and binding. In the event of a conflict between this Agreement and/or any regulatory requirements, the regulatory requirements control and the City reserves the right to resolve the conflict and determine the Subrecipient's compliance with such provisions.

5.13. Applicable Law

This Agreement shall be construed and interpreted in accordance with California law. In the event of legal action resulting from a dispute hereunder, the parties agree that the State and Federal courts of the State of California shall have jurisdiction and that the proper forum for such action shall be in Orange County, California.

5.14 Headings & Pronouns

The headings in this Agreement are for convenience only and do not affect the meanings or interpretation of the contents. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine, or neutral gender, shall include all other genders, and singular nouns used herein shall include the plural and vice versa.

5.15 Construction

The parties have participated jointly in the negotiation and drafting of this Agreement and have an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with

its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

5.16 Severability

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

5.17 Signature Authority

The persons executing this Agreement on behalf of City and Subrecipient warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so City and Subrecipient are formally bound to the provisions of this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the City and Subrecipient have indicated their acceptance of the terms of this Agreement by their signatures below on the dates indicated.

SUBRECIPIENT

Signature

Date: _____

[Name and Title]

CITY OF COSTA MESA

Lori Ann Farrell Harrison
City Manager

Date: _____

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management

Date: _____

APPROVED AS TO PURCHASING:

Carol Molina
Finance Director

Date: _____