

SUBCONTRACT AGREEMENT

between

SHELTER THE HOMELESS, INC.

and

SALT LAKE COUNTY

This Subcontract Agreement (this “Agreement”) is entered into by and between **SHELTER THE HOMELESS, INC.**, a Utah non-profit corporation (“STH”) and **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah (the “County”). STH and the County and may each be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS:

A. The State of Utah, Department of Workforce Services, Housing, & Community Development Division (the “State”) has entered into a contract with STH to provide for certain services.

B. The services provided by STH include the construction of a homeless resource center in South Salt Lake on property located at 3380 South 1000 West (“Resource Center”).

C. On June 1, 2018, the State amended its contract with STH (the “Amended Contract”) to increase the amount of funding provided by the State to STH to include \$2,194,546.30 that can be used for land acquisition in South Salt Lake on 1000 West between 3300 and 3500 South.

D. The Amended Contract expressly contemplates that this additional funding will be subcontracted with the County with limitations on its use.

E. STH and the County now desire to enter into this Agreement providing for the transfer of Two Million One Hundred Ninety-Four Thousand Five Hundred Forty-Six Dollars and Thirty Cents (\$2,194,546.30) of to STH to be used by the County as provided in this Agreement and in accordance with the Amended Contract.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties represent and agree as follows:

ARTICLE 1 - DISBURSEMENT OF COUNTY TRANSPORTATION FUNDS

1.1. Homeless to Housing - State Funds. STH shall allocate and disburse Two Million One Hundred Ninety-Four Thousand Five Hundred Forty-Six Dollars and Thirty Cents (\$2,194,546.30) of Homeless to Housing – State Funds to the County, all on the terms and subject to the conditions of this Agreement. As part of this allocation and disbursement, STH shall provide County with a Declaration of Donation in accordance with County policy.

1.2. County. The County shall use the Homeless to Housing – State Funds allocated and disbursed to it under this Agreement only for land acquisitions in South Salt Lake on 1000 West between 3300-3500 South, and in accordance with all applicable federal, state and local laws, rules and regulations as follows:

(a) The funds may be used for additional parcel acquisitions around South Salt Lake, but may not exceed fair market value as evidenced by an appraisal for each parcel acquisition.

(b) The funds will only be used for parcel acquisition on 1000 West, from 3300 South to 3500 South.

(c) Council shall approve the Declaration of Donation subject to the provisions and restrictions of this Agreement.

ARTICLE 2 – COVENANTS AND AGREEMENTS

2.1. Recordkeeping. The County agrees to maintain its books and records in such a way that any Homeless to Housing - State Funds received from the County pursuant to this Agreement will be shown separately on the County's books. The County shall maintain records adequate to identify the use of the Homeless to Housing – State Funds for the purposes specified in this Agreement. The County shall make its books and records related to the Homeless to Housing – State Funds available to STH at reasonable times.

2.2. Assignment and Transfer of Homeless to Housing – State Funds. The County shall not assign or transfer its obligations under this Agreement nor its rights to the Homeless to Housing – State Funds under this Agreement without prior written consent from STH. The County shall use the Homeless to Housing - State Funds provided pursuant to this Agreement exclusively and solely for the purposes set forth in the Agreement.

ARTICLE 3 –DEFAULTS AND REMEDIES

3.1. County Event of Default. The occurrence of any one or more of the following shall constitute an “Event of Default” as such term is used herein:

(a) Failure of the County to comply with any of the material terms, conditions, covenants, or provisions of this Agreement that is not fully cured by the County on or before the expiration of a sixty (60) day period (or, if STH approves in writing, which approval shall not be unreasonably withheld, conditioned or delayed, such

longer period as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be cured within 60 days) commencing upon STH's written notice to the County of the occurrence thereof.

3.2. STH's Remedies in the Event of Default. Upon the occurrence of any Event of Default, STH may, in its sole discretion, and in addition to all other remedies conferred upon STH by law or equity or other provisions of this Agreement, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

- (a) Withhold disbursement of Homeless to Housing - State Funds to the County; and/or
- (b) Terminate this Agreement.

ARTICLE 4 — MISCELLANEOUS

4.1. Term of Agreement. This Agreement shall take effect immediately upon the completion of the following: (a) the approval of the Agreement by the governing bodies of STH and the County, including the adoption of any necessary resolutions or ordinances by the County authorizing the execution of this Agreement by the appropriate person or persons for the County, (b) the execution of this Agreement by a duly authorized official of each of the Parties, and (c) the filing of a copy of this Agreement with the keeper of records of each Party. This Agreement shall terminate upon the earlier of: (a) the date the Parties have performed all of the material obligations described herein, or (b) three (3) years from the date the Agreement is executed by both Parties. The Parties intend that the distribution described herein will be made promptly following execution of this Agreement and that the County will expend such distribution for the purposes stated in this Agreement promptly following receipt.

4.2. Force Majeure. Neither Party will be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises after this Agreement becomes effective. "Event of Force Majeure" means an event beyond the control of the County or STH that prevents a Party from complying with any of its obligations under this Agreement, including but not limited to: (i) an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); (ii) war, acts or threats of terrorism, invasion, or embargo; or (iii) riots or strikes. If an Event of Force Majeure persists for a period in excess of sixty (60) days, STH may terminate this Agreement without liability or penalty, effective upon written notice to the County.

4.3. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing, and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States mail, postage pre-paid, and certified and addressed to the Parties at their respective addresses.

4.4. Ethical Standards. STH represents that it has not: (a) provided an illegal gift in connection with this Agreement to any County officer or employee, or former County officer or

employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards in connection with this Agreement set forth in State statute or Salt Lake County Code of Ordinances § 2.07, Salt Lake County Code of Ordinances; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, in connection with this Agreement, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

4.5. Entire Agreement. This Agreement and the documents referenced herein, if any, constitute the entire Agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either Party, or agents for either Party, that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

4.6. Amendment. This Agreement may be amended, changed, modified or altered only by an instrument in writing.

4.7. Governing Law and Venue. The laws of the State of Utah govern all matters arising out of this Agreement. Venue for any and all legal actions arising hereunder will lie in the District Court in and for the County of Salt Lake, State of Utah.

4.8. No Obligations to Third Parties. The Parties agree that the STH's obligations under this Agreement are solely to the County and that the County's obligations under this Agreement are solely to STH. The Parties do not intend to confer any rights to third parties unless otherwise expressly provided for under this Agreement.

4.9. Agency. No officer, employee, or agent of STH or the County is intended to be an officer, employee, or agent of the other Party. None of the benefits provided by each Party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the officers, employees, or agents of the other Party. STH and the County will each be solely and entirely responsible for its acts and for the acts of its officers, employees, or agents during the performance of this Agreement.

4.10. No Waiver. The failure of either Party at any time to require performance of any provision or to resort to any remedy provided under this Agreement will in no way affect the right of that Party to require performance or to resort to a remedy at any time thereafter. Additionally, the waiver of any breach of this Agreement by either Party will not constitute a waiver as to any future breach.

4.11. Severability. If any provision of this Agreement is found to be illegal or unenforceable in a judicial proceeding, such provision will be deemed inoperative and severable, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties.

4.12. Exhibits and Recitals. The Recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

4.13. Counterparts. This Agreement may be executed in counterparts and all so executed will constitute one agreement binding on all the Parties, it being understood that all Parties need not sign the same counterpart. Further, executed copies of this Agreement delivered by facsimile or email will be deemed an original signed copy of this Agreement.

IN WITNESS WHEREOF, each Party hereby signs this Agreement on the date written by each Party on the signature pages attached hereto.

[Intentionally Left Blank - Signature Page Follows]

SUBCONTRACT AGREEMENT - SIGNATURE PAGE FOR THE COUNTY

SALT LAKE COUNTY

By _____
Mayor Ben McAdams or Designee

Dated: _____, 20____

Approved as to Form and Legality:

By _____
Deputy District Attorney

SUBCONTRACT AGREEMENT – SIGNATURE PAGE FOR STH

SHELTER THE HOMELESS, INC.

By _____

Name: _____

Title: _____

Dated: _____, 20____