

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT (Amendment) made and entered into as of this ____ day of _____ 2023; amends the Agreement entered into between the CITY OF FRESNO, a municipal corporation (City or Owner), and RH Community Builders LP, a California Limited Partnership (RH Community Builders).

RECITALS

WHEREAS, the City and RH Community Builders entered into an Agreement, dated August 18, 2022 (Agreement), to provide professional repaired and prepared to serve as an interim low-barrier emergency homeless shelter; Villa Motel (Property) for the HomeKey program for a total fee of \$4,702,108.00; and

WHEREAS, the City and RH Community Builders have agreed to increase the budget for the repairs, maintenance and to serve as an interim low-barrier emergency homeless shelter to the Property by \$450,000.00 for a total fee is \$5,152,108.00; and

WHEREAS, the City and RH Community Builders desire to enter into this First Amendment to modify the Agreement; and

WHEREAS, with entry into this Amendment, RH Community Builders agrees that it has no claim, demands, or disputes against the City.

AGREEMENT

NOW, THEREFORE, the parties agree that the Agreement be amended as follows:

1. The Agreement is amended to increase the budget by \$450,000.00.
2. The RH Community Builders' sole compensation for satisfactory performance of all services required or rendered pursuant to the Agreement shall be increased by \$450,000.00 for a total fee not to exceed \$5,152,108.00.
3. In the event of any conflict between the body of this Amendment and the Agreement, the terms, and conditions of the body of this Amendment shall control and take precedence over the terms and conditions expressed within the Agreement. Furthermore, any terms or conditions contained within the Agreement which purport to modify the allocation of risk between the parties, provided for within the body of this Amendment, shall be null and void.
4. Except as otherwise provided herein, the Agreement shall remain in full force and effect.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the Parties have executed this Amendment at Fresno, California, the day, and year first above written.

CITY OF FRESNO,
a California municipal corporation

RH COMMUNITY BUILDERS LP,
a California Limited Partnership

By: _____
Georgeanne A. White
City Manager

By: Wayne Rutledge
Name: Wayne Rutledge

Title: CEO
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: Brad Hardie
Name: Brad Hardie

By: Angela M. Karst 02/06/2023
Angela M. Karst Date
Deputy City Attorney

Title: President
(If corporation or LLC., CFO., Treasurer,
Secretary or Assistant Secretary)

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

Attachments:
1. Exhibit A – Agreement

**REPAIR SERVICES AGREEMENT
CITY OF FRESNO AND RH COMMUNITY BUILDERS LP**

This Repair Services Agreement (Agreement) is made as of the 18 day of August 2022 (Effective Date), by and between the City of Fresno (City or Owner), and RH Community Builders LP, a Limited Partnership (RH Community Builders). The City of Fresno and RH Community Builders are referred to hereinafter each as a "Party" or collectively as "Parties."

RECITALS

- A. WHEREAS there is a critical housing-shortage crisis in the City of Fresno, and the crisis is contributing to the growth in homeless population counts throughout the city; and
- B. WHEREAS, the City of Fresno has acquired The Villa Motel (Property) located at 817 North Parkway Drive, Fresno, CA, 93728 (APN 449-335-25), and the City desires to have the Property repaired and prepared to serve as an interim low-barrier emergency homeless shelter; and
- C. WHEREAS, RH Community Builders has resources, as well as the technical, and financial expertise to among other things, repair projects in order to make them available for affordable housing and homeless services, and
- D. WHEREAS Project Off Ramp and Project Homekey have been successful collaborations between the City and RH Community Builders to place, and not displace, homeless residents into emergency shelter housing with available case-management services. To date, approximately 70% of the homeless individuals offered housing and case management services through Project Off Ramp and Project Homekey have accepted assistance, and
- E. WHEREAS, RH Community Builders successfully completed the repair of one (1) motel along the Parkway Corridor to serve as a low-barrier emergency homeless shelter, and
- F. WHEREAS the City contracts with RH Community Builders and/or their affiliate organizations to provide Property Management and Case Management Services for the homeless individuals housed at the City of Fresno's motels along Parkway Corridor; and
- G. WHEREAS the City and RH Community Builders now desire to enter into this Agreement with the terms, conditions and compensation specified for the repair of The Villa Motel to a low-barrier emergency homeless shelter (the Project).

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and RH Community Builders agree as follows:

AGREEMENT

NOW, THEREFORE, it is mutually agreed as follows:

1. Responsibilities of the Parties. City's Charter allows it to execute agreements with various third-parties, including governmental agencies to perform public works of improvement. The City desires to engage RH Community Builders to carry out

the Project, which shall include the performance of certain public works on behalf of the City, as provided herein. The Parties contemplate that RH Community Builders shall subcontract some or all of the public works provided under this Agreement. In doing so, RH Community Builders shall manage and coordinate with its contractors in order to complete the repair and maintenance of the Property. The repair and maintenance design and work shall be subject to City approval, which the City shall not unreasonably withhold, delay or condition. The City shall be responsible for payment to RH Community Builders as provided in Section 3 below.

2. Term of Agreement and Conditions Precedent. This Agreement shall be effective as of the Effective Date and shall continue in full force and effect through March 21, 2023, or until the Project is completed, whichever occurs first; subject to any earlier termination in accordance with this Agreement. Project completion will occur when both Parties have signed off on the repairs, following a walk-through by representatives of both Parties.

3. Compensation. RH Community Builders' sole compensation for satisfactory performance of all services rendered pursuant to this Agreement shall be with a not-to-exceed upper limit of [\$4,702,108], paid on the basis of the rates set forth in the schedule of fees and expenses contained in the agreements expressly incorporated into **Exhibit A**.

(a) Following initial advance payment of 50%, detailed statements shall be rendered monthly for services performed in the preceding month and will be payable by the City within thirty (30) days of receipt of such statements.

(b) The Parties may agree to modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to RH Community Builders' compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each Party. RH Community Builders shall not be entitled to any additional compensation if services are performed prior to a signed written amendment, unless such services are required to mitigate an emergency situation which requires immediate attention to avoid damage to the Property, public property, or remedy some other health and safety condition.

4. Termination, Remedies, and Force Majeure.

(a) This Agreement shall terminate without any liability of City to RH Community Builders upon the earlier of: (i) RH Community Builders' filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third Party against RH Community Builders which petition is not dismissed within ninety (90) calendar days of the filing of the petition; (ii) sixty (60) calendar days' after RH Community Builder's receipt of written notice from the City for breach of this Agreement by RH Community Builders and which breach is not cured; (iii) City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) This Agreement shall terminate without any liability of RH Community

Builders to City upon the earlier of: (i) City's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third Party against City which petition is not dismissed within ninety (90) calendar days of the filing of the petition; (ii) sixty (60) calendar days after City's receipt of written notice for breach of this Agreement by City and which breach is not cured; or (iii) expiration of this Agreement.

(c) Immediately upon any termination or expiration of this Agreement, each Party shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and, (iii) in the case of RH Community Builders, return to City any and all unearned payments and all properties and materials in the possession of RH Community Builders that are owned by City. Subject to the terms of this Agreement, RH Community Builders shall be paid compensation for services satisfactorily performed prior to the effective date of termination.

(d) Upon any breach of this Agreement by either Party, the other may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement.

(e) Upon a written request from the other Party, the recipient Party shall provide the other with adequate written assurances of future performance in the event that such Party fails to comply with any terms or conditions of this Agreement.

(f) Each Party shall be liable for default unless its nonperformance is caused by an occurrence beyond the reasonable control of that Party and without its fault or negligence such as, acts of God or the public enemy, acts of City or RH Community Builders, as the case may be, in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The nonperforming Party shall notify the other in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the other of the cessation of such occurrence.

5. Intentionally left blank.
6. Intentionally left blank.
7. Intentionally left blank.
8. Level of Skill; Subcontractors.

(a) RH Community Builders may, at its sole discretion, subcontract any of the services required under this Agreement, in compliance with the terms of this Agreement. RH Community Builders shall require that any general contractor hired by RH Community Builder engage in a lawful competitive process to select any and all subcontractors. RH Community Builders shall use good faith efforts to hire qualified, licensed, insured and bonded local contractors that have a local workforce. It is further mutually understood and agreed by and between the parties hereto that inasmuch as RH Community Builders represents to City that RH Community Builders and its

subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said industry necessary to perform the services agreed to be done by it under this Agreement, City relies upon the skill of RH Community Builders and its subcontractors, if any, to do and perform such services in a skillful manner and RH Community Builders agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by City shall not operate as a release of RH Community Builders or any subcontractors from said industry and professional standards.

(b) City reserves the right to hire additional contractors to perform the services required under this Agreement, and offset any future payment to RH Community Builders accordingly, so long as such hiring and associated offset is memorialized in an Addendum executed by the Parties, setting forth the amount of the offset. In the event that the City elects to hire additional contractors to perform the services, City shall not cause RH Community Builders to breach any agreement with any of its contractors or City shall fully reimburse RH Community Builders for any claims made by its subcontractors.

(c) If RH Community Builders subcontracts any or all of the services to be performed under this Agreement where the subcontract is for a total of \$250,000 or greater during any calendar year, RH Community Builders shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City Risk Manager or designee. If no Side Agreement is required, RH Community Builders will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

(d) To the full extent required by applicable federal and state law, each Party and its contractors and agents shall comply with the Davis-Bacon Act, as amended, California Labor Code Section 1720 et seq., and the regulations adopted pursuant thereto (Prevailing Wage Laws), if so required, and shall be solely responsible for carrying out the requirements of such provisions. Each Party shall indemnify, defend and hold the other and its elected and appointed officers, officials, employees, agents, consultants, and contractors harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors, or third Party claimants pursuant to Labor Code sections 1726 and 1781), the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including, but not limited to the Prevailing Wage Laws, or any act or omission of that Party related to the payment or requirement of payment of prevailing wages.

9. Indemnification. To the furthest extent allowed by law, RH Community Builders shall indemnify, hold harmless and defend City and each of its officers, officials,

employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of RH Community Builders, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

If, pursuant to Section 8 above, RH Community Builders should subcontract all or any portion of the services to be performed under this Agreement, RH Community Builders shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

If, pursuant to Section 8 above, City should subcontract all or any portion of the services to be performed under this Agreement, City shall require each subcontractor to indemnify, hold harmless and defend RH Community Builders and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This Section shall survive termination or expiration of this Agreement.

10. Insurance.

(a) Throughout the life of this Agreement, RH Community Builders shall pay for and maintain in full force and effect all insurance as required in Exhibit C, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit C shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, RH Community Builders or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to RH Community Builders shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this Section shall in any way relieve RH Community Builders of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by RH Community Builders shall

not be deemed to release or diminish the liability of RH Community Builders, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by RH Community Builders. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of RH Community Builders, its principals, officers, agents, employees, or persons under the supervision of RH Community Builders, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of City, RH Community Builders shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If RH Community Builders should subcontract all or any portion of the services to be performed under this Agreement, RH Community Builders shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this Section, except that any required certificates and applicable endorsements shall be on file with RH Community Builders and City prior to the commencement of any services by the subcontractor. RH Community Builders and any subcontractor/sub-consultant shall establish additional insured status for City, its officers, officials, employees, agents, and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

11. Conflict of Interest and Non-Solicitation.

(a) RH Community Builders shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of City, RH Community Builders shall provide a written certification that, to its best knowledge, after diligent inquiry, RH Community Builders and its respective subcontractor(s) are in full compliance with all laws and regulations. RH Community Builders shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, RH Community Builders shall immediately notify City of these facts in writing.

(c) In performing the work or services to be provided hereunder, RH Community Builders shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board,

committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) RH Community Builders represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit, or procure this Agreement or any rights/benefits hereunder.

(e) RH Community Builders and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third Party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, RH Community Builders shall remain responsible for complying with Section (a), above.

(f) If RH Community Builders should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, RH Community Builders shall include the provisions of this Section in each subcontract and require its subcontractors to comply therewith.

(g) This Section shall survive expiration or termination of this Agreement.

12. [Intentionally Omitted.]

13. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or designee.

(b) Records of RH Community Builders' expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of RH Community Builders pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to City until such action is resolved, or until the end of said time period whichever shall later occur. If RH Community Builders should subcontract all or any portion of the services to be performed under this Agreement, RH Community Builders shall cause each subcontractor to also comply with the requirements of this paragraph. This Section shall survive expiration or termination of this Agreement.

(c) A For any portion of the work or services subcontracted by RH Community Builders, RH Community Builders shall require that subcontractor to provide evidence to RH Community Builders that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

14. Nondiscrimination. To the extent required by controlling federal, state and local law, RH Community Builders shall not employ discriminatory practices in the

provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, RH Community Builders agrees as follows:

(a) RH Community Builders will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) RH Community Builders will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. RH Community Builders shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to RH Community Builders' employment practices including, but not be limited to, the following: 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. RH Community Builders agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) RH Community Builders will, in all solicitations or advertisements for employees placed by or on behalf of RH Community Builders in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) If RH Community Builders should subcontract all or any portion of the services to be performed under this Agreement, RH Community Builders shall cause each subcontractor to also comply with the requirements of this Section.

15. Independent Contractor.

(a) In the furnishing of the services provided for herein, RH Community Builders is acting solely as an independent contractor. Neither RH Community Builders, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which RH Community Builders shall perform its work and functions. However, City shall retain the right to administer this Agreement, to the extent provided for herein, so as to verify that RH Community Builders

is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between RH Community Builders and City. RH Community Builders shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, RH Community Builders shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, RH Community Builders and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. RH Community Builders shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, RH Community Builders shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding 'or and payment of RH Community Builders' employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. It is acknowledged that during the term of this Agreement, RH Community Builders may be providing services to others unrelated to City or to this Agreement.

16. Notices. Any notice required or intended to be given to either Party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the Party to which notice is to be given at the Party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

17. Binding. Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

18. Assignment.

(a) This Agreement is personal to each Party and there shall be no assignment by either Party of its rights or obligations under this Agreement without the prior written approval of the other. Any attempted assignment shall be null and void unless approved in writing for the City, by the City Manager or designee, or for RH Community Builders, by its CEO or designee.

(b) RH Community Builders hereby agrees not to assign the payment of any monies due RH Community Builders from City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and

all monies due RH Community Builders directly to RH Community Builders.

19. Compliance With Law. Each Party shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

20. Waiver. The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

21. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

22. Headings. The Section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

23. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

24. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either Party, but rather by construing the terms in accordance with their generally accepted meaning.

25. Attorney's Fees. If either Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorney's fees and legal expenses.

26. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

27. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

28. Cumulative Remedies. No remedy or election hereunder shall be deemed

exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

29. No Third Party Beneficiaries. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

30. Extent of Agreement. Each Party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and RH Community Builders.


[SIGNATURES FOLLOW ON THE NEXT PAGE.]

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


CITY OF FRESNO,
a California municipal corporation

By: 
Georgeanne A. White, City Manager
Office of the City Manager

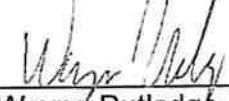
APPROVED AS TO FORM:
RINA M. GONZALES
Interim City Attorney


By:  8/13/22
Angela M. Karst
Deputy City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By:  9-9-22
Deputy Records Supervisor

RH Community Builders LP,
a California limited partnership

By: 
Wayne Rutledge, CEO

By: 
Brad Hardie, President

RH COMMUNITY BUILDERS LP:
Attention: CEO
2550 W. Clinton Avenue #142
Fresno, CA 93705
Phone: (559) 492-1373

Addresses:

CITY:
City of Fresno
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-7770

Attachments:

1. Exhibit A - Term, Scope, and Compensation
2. Exhibit B - Property Description
3. Exhibit C - Insurance Requirements
4. Exhibit D - Conflict of Interest Disclosure Form

EXHIBIT A

TERM, SCOPE, AND COMPENSATION

The City's acquisition of The Villa Motel is part of Project Homekey. The short-term objective of the Villa Motel acquisition is to increase the capacity of low-barrier emergency shelter beds to house homeless individuals currently living in areas that pose an unacceptable level of risk to public health and safety.

The City has purchased the Villa Motel and desires to retain RH Community Builders to repair the motel and prepare the motel for occupancy as a low-barrier emergency homeless shelter. The Term, and Compensation to repair, and prepare the Villa Motel for occupancy as a low-barrier homeless shelter is presented in the following sections.

- 1) **Agreement Term.** The Term of this Agreement shall be in effect until March 21, 2023, commencing on the Effective Date and ending upon completion of the Scope of Work, The Term may be extended with the mutual consent of both parties.
- 2) **Security Services.** At all times during the Repair Project, RH Community Builders shall maintain and pay for security personnel when construction crews and/or RH Community Builder staff are not on site.
- 3) **Appointment of Repair Project Manager.** RH Community Builders will assign a Repair Project Manager to serve as the point of contact with the City of Fresno to coordinate the planning, permitting, and inspection requirements for the renovation project. The City of Fresno will also designate a point of contact for the Repair Project.
 - a) **Project Schedule and Cost Estimate.** Within ten (10) calendar days of the execution of this agreement, the Repair Project Manager will provide the City of Fresno with a preliminary schedule and cost estimate to repair The Villa Motel and prepare it for occupancy as a low-barrier emergency homeless shelter. It is estimated that the time required from the execution of this agreement to receipt of occupancy permit will be approximately seven (7) months. The schedule shall identify action items required by the City to meet the project schedule.
 - b) **Progress Meetings and Reports.** The Repair Manager shall provide weekly progress reports for the repair work, and the Repair Manager shall schedule bi-weekly progress meetings with the City of Fresno.
 - c) **Retention, Inspection and Audit of Records.** The Repair Manager agrees to maintain appropriate accounting records for all labor, materials, equipment, supplies, and service provided to renovate The Villa Motel for low-barrier emergency homeless shelter services. The Repair Manager shall retain all accounting records relating to the renovation work for a period of three (3) years. The City reserves the right to conduct an audit of the accounting records for the renovation work any time during the three-year period.

- 4) **Changed Conditions.** The City and RH Community Builders have visually inspected and toured The Villa Motel to preliminarily assess the condition of the facility and prepare preliminary cost estimates for the repair.
 - a) Despite the best intentions, diligence, and discipline of the City of Fresno and RH Community Builders, changed conditions may be encountered during the repair work and the changed conditions may require adjustments in the work schedule or costs. RH Community Builders will provide the City with owner-initiated change orders, as applicable.
 - b) When changed conditions are encountered for the repairs, the Repair Manager will notify the City's point of contact to schedule a meeting to review and discuss options to address the changed condition.
 - c) The agreed upon course of action to address the changed condition shall be prepared in writing by the Repair Manager and submitted to the City.
 - d) Under no circumstances shall the Repair Manager authorize additional work or extend the project schedule without the consent of the City of Fresno, unless such additional work is required to mitigate an emergency situation which requires immediate attention to avoid damage to the Property, public property, or remedy some other health and safety condition.
- 5) **Service Contracts.** The Repairs Manager is authorized to procure contractors using a competitive selection process to provide building trade, equipment, materials, supplies, and other services required to repair The Villa Motel to serve as a low-barrier emergency homeless shelter. The Repair Manager is also authorized to utilize any existing Trade Services contracts for which RH Community Builders has completed appropriate procurement.
 - a) **Warranties for Workmanship and Materials.** All service contracts shall include a 12-month warranty for workmanship and materials provided for the repairs as appropriate. Any exceptions should be provided by the City in writing.
 - b) **Regulatory Compliance.** The Repairs Manager shall plan and execute the renovation of The Villa Motel in compliance with, all statutes, laws, rules, regulations, requirements, orders, notices, determinations, and ordinances of any federal, state, or local government and appropriate agencies, departments, commissions, or boards.
- 6) **Compensation.** The Repair Manager's compensation for the renovation work shall be on a Cost-Plus Fixed Fee Basis.
 - a) **Repair Management Fixed-Fee.** As compensation for the project management and administration of the repair work, RH Community Builders shall be entitled to a Repair Management Fixed-Fee totaling \$611,000. The Management Fixed-Fee shall be payable monthly during the repair work. The Management Fee shall be established at **\$87,285.71 per month**. The Repair Management Fixed-Fee is in addition to the direct and indirect costs incurred by RH Community Builders to execute the repair work.

- b) Direct and Indirect Renovation Costs. All Direct and Indirect costs will be paid by the City of Fresno to RH Community Builders at cost. Direct costs are actual costs paid directly by RH Community Builders to contractors, equipment suppliers, and service providers to complete the renovation work. Indirect costs are costs incurred by RH Community Builders for general overhead, office expenses, and personnel costs for individuals assigned to the repair work.
 - c) Payment in advance of work to begin, will be required for 50% of the agreed upon Scope of Work and Budget for all Direct costs. Following initial payment of 50%, all Direct and Indirect costs shall be payable upon receipt of invoices or other documentation provided by RH Community Builders with monthly pay applications, due and payable within 30 days.
 - d) Permits and Inspection Fees. The Repair Manager will be required to ensure payment of all repair and inspection fees required to repair The Villa Motel to serve as a low-barrier emergency homeless shelter. These charges may be included in pay applications as Direct Costs.
 - e) Utility Deposits and Monthly Charges. The Repair Manager will be required to ensure payment of all security deposit fees to initiate utility services for The Villa Motel, and to pay monthly charges for utilities during the repair work period. Utility services include, but are not limited to, water, sewer, solid waste, internet, gas, and electricity. These charges may be included in pay applications as Direct Costs.
- 7) Property and Liability Insurance. The City shall maintain, at its cost, property, and liability insurance for The Villa Motel during the period when repair work is being conducted.
 - 8) Workers' Compensation Insurance. RH Community Builders shall ensure compliance with all worker's compensation insurance requirements for its employees involved in the repair work.
 - 9) Indemnification. The repair work shall be under the control and management of the Repair Manager.

EXHIBIT B
Property Description

Legal Description

For APN/Parcel ID(s): 449-231-11

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THE EAST 1/4 OF THE WEST 1/2 OF THE EAST 1/2 OF LOT 99 OF ROEDING VILLA COLONY, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED DECEMBER 5, 1902 IN BOOK 2, PAGE 43 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXHIBIT C

INSURANCE REQUIREMENTS

**Service Agreement between City of Fresno (City)
and RH Community Builders LP (Service Provider)
Repair of The Villa Motel for Low-Barrier Emergency Shelter Housing**

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the City, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Service Provider, or any Party the Service Provider subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) 1,000,000 aggregate for products and completed operations; and,
 - (iv) \$1,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

OR*

PERSONAL AUTOMOBILE LIABILITY insurance with limits of liability not less than:

- (i) \$100,000 per person;
- (ii) \$300,000 per accident for bodily injury; and,
- (iii) \$50,000 per accident for property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event Service Provider purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Service Provider shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Service Provider shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents, and volunteers; or
- (ii) Service Provider shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1. City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. Service Provider shall establish additional insured status for the City and for all ongoing and completed operations by

use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims related to this Agreement, Service Provider's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of Service Provider's insurance and shall not contribute with it. Service Provider shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The *Workers' Compensation insurance policy* is to contain, or be endorsed to contain, the following provision: Service Provider and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents, and volunteers.

All *policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days' written notice by certified mail, return receipt requested, has been given to City. Service Provider is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Service Provider shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Service Provider shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days' prior to the expiration date of the expiring policy.

VERIFICATION OF COVERAGE

Service Provider shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Service Provider shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration, or termination of this Agreement.

EXHIBIT D

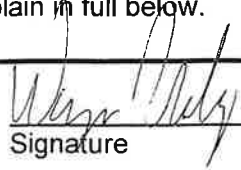
DISCLOSURE OF CONFLICT OF INTEREST

Repair of The Ambassador Inn for Low-Barrier Emergency Shelter Housing

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

☐ Additional page(s) attached.


Signature

9-8-22

Date

Wayne Rutledge, CEO

Name

RH Community Builders LP

Company

2550 W. Clinton Avenue #142

Address

Fresno, CA 93705

City, State, Zip