

## **SERVICE AGREEMENT**

### **CITY OF FRESNO, CALIFORNIA**

THIS AGREEMENT (Agreement) is made and entered into, effective on \_\_\_\_\_, by and between the CITY OF FRESNO, a California municipal corporation (City), and Poverello House, a 501(c)3 nonprofit organization (Service Provider).

### **RECITALS**

WHEREAS, City desires to obtain operational services for the City of Fresno's warming centers (Project); and

WHEREAS, Service Provider is engaged in the business of furnishing such services as an emergency shelter operator and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, Service Provider acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107; and

WHEREAS, this Agreement will be administered for City by its City Manager (Administrator) or designee.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. Service Provider shall perform to the satisfaction of City the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.
2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through December 31, 2025, subject to any earlier termination in accordance with this Agreement. The agreement includes two optional one-year extensions which may be granted through written agreement of both parties. The services of Service Provider as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.
3. Compensation.
  - (a) Service Provider's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement and shall not exceed \$356,500.00, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**. Such fee includes all expenses incurred by Service Provider in performance of the services.

- (b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of City business. City shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.
- (c) The parties may 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 Service Provider's 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. Service Provider shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies, and Force Majeure.

- (a) This Agreement shall terminate without any liability of City to Service Provider upon the earlier of: (i) Service Provider's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Service Provider; (ii) seven calendar days' prior written notice with or without cause by City to Service Provider; (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) Immediately upon any termination or expiration of this Agreement, Service Provider shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to City any and all unearned payments and all properties and materials in the possession of Service Provider that are owned by City. Subject to the terms of this Agreement, Service Provider shall be paid compensation for services satisfactorily performed prior to the effective date of termination. Service Provider shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.
- (c) In the event of termination due to failure of Service Provider to satisfactorily perform in accordance with the terms of this Agreement, City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, City's damages caused by such failure. In no event shall any payment by City pursuant to this Agreement constitute a waiver by City of any breach of this Agreement which may then exist on the part of Service Provider, nor shall such payment impair or prejudice any remedy available to City with respect to the breach.
- (d) Upon any breach of this Agreement by Service Provider, City 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. If it is determined that City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

- (e) Service Provider shall provide City with adequate written assurances of future performance, upon Administrator's request, in the event Service Provider fails to comply with any terms or conditions of this Agreement.
- (f) Service Provider shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Service Provider and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Service Provider shall notify Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

- (a) Any reports, information, or other data prepared or assembled by Service Provider pursuant to this Agreement shall not be made available to any individual or organization by Service Provider without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, Service Provider shall not, without the prior written consent of City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of City, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in City.
- (b) Any and all writings and documents prepared or provided by Service Provider pursuant to this Agreement are the property of City at the time of preparation and shall be turned over to City upon expiration or termination of the Agreement. Service Provider shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.
- (c) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this Section 5.
- (d) This Section 5 shall survive expiration or termination of this Agreement.

6. Level of Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as Service Provider represents to City that Service Provider 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 Service Provider and its subcontractors, if any, to do and perform such services in a skillful manner and Service Provider 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 Service Provider or any subcontractors from said industry and professional standards.

7. Indemnification. To the furthest extent allowed by law, Service Provider 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) incurred by City, Service Provider or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Service Provider's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents, or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents, or volunteers.

If Service Provider should subcontract all or any portion of the work to be performed under this Agreement, Service Provider 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.

This section shall survive termination or expiration of this Agreement.

8. Insurance.
  - (a) Throughout the life of this Agreement, Service Provider shall pay for and maintain in full force and effect all insurance as required in Exhibit B, 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 B 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, Service Provider 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 Service Provider 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 Service Provider 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 Service Provider shall not be deemed to release or diminish the liability of Service Provider, 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 Service Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Service Provider, its principals, officers, agents, employees, or persons under the supervision of Service Provider, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

9. Conflict of Interest and Non-Solicitation.

- (a) Prior to City's execution of this Agreement, Service Provider shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in Exhibit C. During the term of this Agreement, Service Provider shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Service Provider in such statement.
- (b) Service Provider 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, Service Provider shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Service Provider and the respective subcontractor(s) are in full compliance with all laws and regulations. Service Provider 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, Service Provider shall immediately notify City of these facts in writing.

- (c) Service Provider's duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this Project. Service Provider's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Service Provider shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Service Provider pursuant to this Agreement.
  - (d) In performing the work or services to be provided hereunder, Service Provider 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.
  - (e) Service Provider 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.
  - (f) Service Provider 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, Service Provider shall remain responsible for complying with Section 9(a), above.
  - (g) If Service Provider should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Service Provider shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.
  - (h) This Section 9 shall survive expiration or termination of this Agreement.
10. Recycling Program. In the event Service Provider maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Service Provider at its sole cost and expense shall:
- (a) Immediately establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available

from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

- (b) Immediately contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (c) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (a) above and the ongoing maintenance thereof.

11. 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 Service Provider's 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 Service Provider 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 Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.
- (c) Prior to execution of this Agreement by City, Service Provider shall have provided evidence to City that Service Provider is licensed to perform the services called for by this Agreement (or that no license is required). If Service Provider should subcontract all or any portion of the work or services to be performed under this Agreement, Service Provider shall require each subcontractor to provide evidence to City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, Service Provider 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, Service Provider agrees as follows:

- (a) Service Provider 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) Service Provider 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. Service Provider 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 Service Provider's 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. Service Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
- (c) Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of Service Provider 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) Service Provider will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Service Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (e) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

- (a) In the furnishing of the services provided for herein, Service Provider is acting solely as an independent contractor. Neither Service Provider, 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 Service Provider shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Service Provider is performing its obligations in accordance with the terms and conditions thereof.

- (b) This Agreement does not evidence a partnership or joint venture between Service Provider and City. Service Provider shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Service Provider shall bear its own costs and expenses in pursuit thereof.
  - (c) Because of its status as an independent contractor, Service Provider and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. Service Provider 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, Service Provider shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Service Provider's 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, Service Provider may be providing services to others unrelated to City or to this Agreement.
14. 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.
15. Binding. Subject to Section 16, below, 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.

16. Assignment.
- (a) This Agreement is personal to Service Provider and there shall be no assignment by Service Provider of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by Service Provider, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.
  - (b) Service Provider hereby agrees not to assign the payment of any monies due Service Provider 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 Service Provider directly to Service Provider.
17. Compliance With Law. In providing the services required under this Agreement, Service Provider 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
25. 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.
26. 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.
27. 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.
28. 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 Service Provider.
29. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[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

POVERELLO HOUSE,  
a 501(c)3 Nonprofit Organization

By: \_\_\_\_\_  
Georgeanne A. White  
City Manager

DocuSigned by:  
By: Zachary D. Darrah  
500500FE3A0040B...  
Name: Zachary D. Darrah

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

Title: Chief Executive Officer  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

DocuSigned by:  
By: Brandon Collet 12/1/2023  
10FC5444CA0040B...  
Brandon M. Collet Date  
Supervising Deputy City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_

ATTEST:  
TODD STERMER, CMC  
City Clerk

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

By: \_\_\_\_\_  
Date  
Deputy

Addresses:  
City:  
City of Fresno  
Attention: Jennifer Ruiz, Deputy City  
Manager  
2600 Fresno Street  
Fresno, CA 93721-3600  
Phone: (559) 621-7778  
E-mail: Jennifer.Ruiz@fresno.gov

Service Provider:  
Poverello House  
Attention: Zachary D. Darrah, CEO  
412 F Street  
Fresno, CA 93706  
Phone: 559-498-6988  
E-mail: zdarrah@poverellohouse.org

Attachments:  
1. Exhibit A - Scope of Services  
2. Exhibit B - Insurance Requirements  
3. Exhibit C - Conflict of Interest Disclosure Form

# EXHIBIT A

## SCOPE OF SERVICES

### Service Agreement between City of Fresno and Poverello House

#### Warming Center Operations

#### A. WARMING CENTER ACTIVATION

Poverello House requires 72-hour notice from the City of Fresno to open the warming center. The 72-hour notice will enable Poverello House to secure staffing for the warming center locations.

#### B. LOCATION(S) HOURS OF OPERATION & ACCOMMODATIONS

Poverello House will operate warming centers at locations that the City of Fresno has secured. When the temperature is forecasted within 72 hours to drop below 35 degrees, Poverello House will open the warming centers.

The hours of operation are 7 p.m. to 7 a.m. The days of operation are estimated at 25 days per year.

Poverello House staff will begin setup and preparation at 6:00 p.m.(no clients will have access) and clean/close each evening beginning at 7:00 a.m. to 8:00 a.m.

Maximum occupation of facilities will not exceed maximum occupancy of the space.

#### C. INTAKE AND POLICIES

1. Establish a policy and procedure for responding to unaccompanied minors. Poverello House will have an intake process for people accessing the warming center and policies regarding unaccompanied minors.
2. Poverello House's Warming Center Staff will coordinate with Poverello House Street Outreach and Navigation Team to link warming center guests to navigation services.
3. Services will be provided in English and Spanish. If needed, Poverello House will use translation services for other languages to communicate services to guests.
4. Written policies and procedures for the Warming Center will be provided upon request, containing information about the following:
  - a. General program policies and procedures
  - b. Staff responsibilities/code of conduct

- c. Guest responsibilities/code of conduct
  - d. Animal care and safety: service animals and companion animals
  - e. ADA compliance and accommodations
  - f. Any potential reasons for denials to entry and guest removals
  - g. First-aid
  - h. Fire and emergency procedures
  - i. Sexual harassment
  - j. Guest confidentiality requirements
  - k. Safety and Communicable Disease Management
  - l. Covid-19 Safety Guidelines
  - m. Drug and Substance Abuse policy for employees and guests attending the warming center
  - n. Non-discrimination and Diversity, Equity and Inclusion policies
  - o. Chain of custody
  - p. Unaccompanied minors
5. Poverello House will create a grievance policy that will enable guests to anonymously file a complaint or concern regarding the warming center.

#### **D. STAFF & TRAINING**

1. Operate warming centers, with adequate staffing ratios (minimum (1) staff member for every (20) guests and a minimum of (2) staff on-site at all times).
2. Ensure there is a trained supervisor and security personnel on location premises during all operating hours.
3. Provide staff to operate the warming centers, who are trained in advance on the following:
  - a. Process to allow guests to bring service or companion animals into the warming centers.
  - b. Process to assess and mitigate risk associated with allowing guests into the warming centers who may be under the influence of substances as long as they do not pose a risk to themselves or others.
  - c. De-escalation and trauma-informed care strategies.
  - d. Data collection and intake processes to ensure proper documentation and reporting about the warming center operation.

- e. compassionate and dignified care to people experiencing homelessness. The training will include learning de-escalation tactics, mental health first aid, administering Narcan, and other topics pertinent for individuals experiencing homelessness.

## E. SAFETY & SECURITY

1. Poverello House staff will ensure no cooking, vaping, or smoking occurs inside the building.

Poverello House will also provide adequate first aid kits to accommodate the number of people in the warming centers.

Provide staff to ensure a safe and secure area for personal property storage with controlled-access.

Poverello House will provide security for the Warming Center sites. Security will be Poverello House staff and not a third-party vendor. Security will receive training from Poverello House staff that promotes empathy, compassion, and cultural competency. Training will include de-escalation training and trauma-informed care. Security will keep records of all incidents and report to the appropriate staff.

## F. MEALS AND PERSONAL CARE

1. Poverello House will provide dinner and breakfast for guests in the warming center sites.
2. Water and snacks will also be available.
3. Personal protective equipment (PPE) will be available for staff and guests upon request.

## G. MEDICATION AND SUBSTANCE USE

1. Poverello House will not permit alcohol or illegal substance use onsite.
2. Poverello House staff will admit guests who appear under the influence of a substance as long as they do not pose a risk to themselves or others.

## H. COLLABORATION

1. Poverello House will work with the City of Fresno to ensure good neighbor practices are followed.
2. Poverello House will comply with onsite visits by City of Fresno staff.

## I. REPORTING AND DATA COLLECTION

Poverello House will collect guest's information and enter it into a survey created by the City of Fresno and submitted as part of daily closure procedures. Poverello House will collect information City of Fresno requires, including but not limited to:

1. Number of Guests.
2. Total attendance tracked daily/hourly.
3. Sign in/Sign out. Sign-in sheets must be kept and made available upon request.
4. Number of guest and service animals or pets attending overnight.
5. Age, gender and demographic of guests.
6. Number of guests linked to navigation and emergency shelter services.

**CITY OF FRESNO TO PROVIDE:**

1. Facilities for warming centers.
2. Blankets
3. Cots
4. TB Testing for Warming Center Staff



# Budget

1. The Poverello house shall invoice the City of Fresno according to actual services provided at the rates detailed below.

Receipts and supporting documentation (timesheets, etc.) shall be provided to the City of Fresno with each invoice.

## City of Fresno Proposed Project

**Budget Template** (Please note this is a per night cost)

**Name of Organization:** Poverello House

<b>A. Proposed Supplies and Materials:</b> Includes expenses for equipment and supplies necessary to operate a cooling/warming center. Also includes costs for any trainings or certifications for staff. Detailed itemization is required, avoid lump sum quantities. Receipts will be required for reimbursement.			<b>Costs</b>
Program Supplies-Water, enrichment items, etc.			\$409.78
Meals @ \$5.00 per meal (Breakfast and Dinner, 400 meals for each night of service)			\$2,000.00
Office Supplies (Paper, pens, clipboards, etc.)			\$500.00*
Communications (Burner Cell Phone)			\$400.00*
*One-time costs for the program			
<b>PART A. PROPOSED SUPPLIES &amp; MATERIALS - SUB-TOTAL</b>			<b>\$3,309.78</b>
<b>B. Proposed Staff Costs:</b> Includes staff who will work on the project, their costs with hourly rates required to complete project and details about work performed. Include fringe costs in hourly rate.			
<b>Staff Member &amp; Work Performed</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Costs</b>
Chief Programs Officer (.05 FTE) + 20.865% (Fringe & Taxes)			\$275.31
Senior Director (.15 FTE) + 20.865% (Fringe & Taxes)			\$578.93
Client Services Specialists X 3 X 4 sites + 20.865% (Fringe & Taxes)	\$30.00	14	\$6,483.96
Security Specialist X 5 + 20.865% (Fringe & Taxes)	\$30.00	12	\$2,315.70
<b>PART B. PROPOSED STAFF COSTS – SUB-TOTAL</b>			<b>\$9,653.90</b>

<b>C. Proposed Operating Costs:</b> to include facility rental fees, utilities, transportation and other overhead costs. Costs shall be itemized and reasonable for the proposed scope.	
Overhead Costs Calculated @ 10% of Direct Costs	\$1,296.37
<b>PART C. OPERATING EXPENSES – SUB-TOTAL</b>	<b>\$ 1,296.37</b>
<b>TOTAL AMOUNT REQUESTED</b> (Per Night Cost to Operate Warming Centers)	<b>\$14,260.05</b>

# EXHIBIT B

## INSURANCE REQUIREMENTS

### **Service Agreement between City of Fresno (City) and Poverello House (Service Provider) Cooling and Warming Center Operations**

#### 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 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).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Abuse & Molestation) Insurance that insures against liability arising out of the bodily injury, personal injury, and third-party property damage occurring because of the wrongful or negligent acts attributable to the institution. This coverage should protect against a wide range of potential claims, including but not limited to athletics, alcohol, assault, verbal or physical abuse, campus crime, sexual molestation and other sexual misconducts.

#### 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) \$2,000,000 aggregate for products and completed operations; and,

- (iv) \$2,000,000 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.
- 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.
- 5. PROFESSIONAL LIABILITY (Abuse & Molestation):
  - (i) \$1,000,000 per claim/occurrence; and,
  - (ii) \$2,000,000 policy aggregate.

#### 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 to 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:

The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents, and volunteers; or

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:

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 operations by use of ISO Form CG 20 10 04 13 or CG 20 26 04 13 or by an

executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 04 13 or CG 20 26 04 13.

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.

For any claims relating 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.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

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.

If the Professional Liability (Abuse & Molestation) insurance policy is written on a claims-made form:

The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Service Provider.

Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.

If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Service Provider, Service Provider must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.

A copy of the claims reporting requirements must be submitted to City for review.

These requirements shall survive expiration or termination of the Agreement.

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 (30) 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 (15) calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by Service Provider shall not be deemed to release or diminish the liability of Service Provider, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Service Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Service Provider, its principals, officers, agents, employees, persons under the supervision of Service Provider, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

#### 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.

SUBCONTRACTORS - If Service Provider subcontracts any or all of the services to be performed under this Agreement, Service Provider 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, Service Provider 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.

**EXHIBIT C**  
**DISCLOSURE OF CONFLICT OF INTEREST**  
Cooling and Warming Center Operations

		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: \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

☐ Additional page(s) attached.

  
 \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 December 1, 2023  
 Date

\_\_\_\_\_  
 Zachary D. Darrah  
 Name

\_\_\_\_\_  
 Poverello House  
 Company

\_\_\_\_\_  
 412 F. Street  
 Address

\_\_\_\_\_  
 Fresno, CA 93706  
 City, State, Zip

# APPENDIX C

## CERTIFICATION FOR LOCAL PREFERENCE



Respondent's Name: \_\_\_\_\_  
(Submit with Proposal, if applicable)

**ATTACHMENT**  
**CERTIFICATION FOR LOCAL PREFERENCE**

**Project Name:**

We certify that we qualify as a local business pursuant to Fresno Municipal Code Section 4-109(b)(1).

**Location of Business:**

Primary Office ☐

Please provide street address  
(No P.O. Box)

Branch Office ☐

(Please mark as applicable)

Address:

Phone:

The undersigned Respondent hereby declares under penalty of perjury under the laws of the State of California that the information contained on this CERTIFICATION FOR LOCAL PREFERENCE is correct and complete.

**The above Statement is part of the Proposal. Signing this Proposal on the signature page thereof shall also constitute signature of this Certification.**

**Respondents are cautioned that making a false certification may subject the certifier to criminal prosecution.**