

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT (Amendment) made and entered into as of _____, 2024, amends the Agreement entered into between the CITY OF FRESNO, a municipal corporation (City), and GRACEBOUND INC., a California non-profit Corporation (Contractor).

RECITALS

WHEREAS, City and Contractor entered into an Agreement dated September 28, 2023 (Agreement), for professional MOBILE SHOWER OPERATIONS (Project); and

WHEREAS, City AND Contractor desires to amend the original scope of work to include additional operating days on weekends and for special events and to increase the total compensation for the Project by \$42,799.42 for a total award of \$342,799.42.

WHEREAS, with entry into this Agreement, the Contractor agrees it has no claim, demand, or dispute against the City.

AMENDMENT

NOW, THEREFORE, the Parties agree that the Agreement is amended as follows:

1. The recitals of this Amendment are incorporated and made a part of the Agreement.
2. Contractor shall provide additional services to include operations on weekends and for special events as described in the Revised Scope of Services and Budget (Exhibit A), attached hereto and incorporated herein by reference.
3. Section 4 of the Agreement is deleted in its entirety and shall be replaced with the following:

“Indemnification. To the furthest extent allowed by law, including California Civil Code section 2782, CONTRACTOR shall indemnify, defend and hold harmless CITY, County of Fresno and each of their officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract . CONTRACTOR'S obligations as set forth in this section shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, CONTRACTOR, whenever there is any causal connection between the CONTRACTOR's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, CONTRACTOR expressly agrees to undertake a duty to defend CITY, County of

Fresno and any of their officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by CONTRACTOR expressly includes all costs of litigation, attorneys fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to CONTRACTOR as reasonably determined by CITY.

Upon the tender by CITY to CONTRACTOR, CONTRACTOR shall be bound and obligated to assume the defense of CITY, County of Fresno and any of their officers, officials, employees, agents, or volunteers, including the duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from CITY or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by CONTRACTOR that if CITY tenders a defense of a claim on behalf of CITY, County of Fresno or any of their officers, officials, employees, agents, or volunteers and CONTRACTOR fails, refuses or neglects to assume the defense thereof, CITY, County of Fresno, and their officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and CONTRACTOR shall be bound and obligated to reimburse CITY, County of Fresno, and their officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether CITY provided approval for, or did not review or object to, any insurance CONTRACTOR may have procured in accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by CITY, County of Fresno, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If CONTRACTOR should subcontract all or any portion of the work to be performed under this Contract, CONTRACTOR shall require each subcontractor to Indemnify, hold harmless and defend CITY, County of Fresno, and each of their officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.

4. Section 7 of the General Conditions is deleted in its entirety and replaced with the following:

Insurance Requirements. Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required herein

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 his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, County of Fresno, and their 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, CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, 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 CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

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).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, County of Fresno, and their 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) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 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 and EMPLOYER'S LIABILITY with limits of liability not less than:

- (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 CONTRACTOR 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, County of Fresno, and their officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) CONTRACTOR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her 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

- (i) 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 has been given to CITY, except ten (10) days for nonpayment of premium. CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR 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.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name CITY, County of Fresno, and their officers, officials, employees, agents and volunteers as an additional insured. CONTRACTOR shall establish additional insured status for the City and for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONTRACTORS' insurance shall be primary to and require no contribution from the City or County of Fresno. The Commercial General insurance policy is required to include primary and non-contributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to CITY, County of Fresno, and their officers, officials, employees, agents and volunteers. If CONTRACTOR maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONTRACTOR.
- (v) 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.

(vi) For any claims related to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance with respect to the CITY, County of Fresno, and their officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.

(vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, County of Fresno, and their officers, officials, employees, agents and volunteers.

(viii) The Commercial General and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, County of Fresno, and their officers, officials, employees, agents and volunteers.

PROVIDING OF DOCUMENTS - CONTRACTOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her 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, CONTRACTOR 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. All subcontractors working under the direction of CONTRACTOR shall also be required to provide all documents noted herein.

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

5. Contractor's sole compensation for satisfactory performance of all services required or rendered pursuant to this Amendment shall be increased by \$42,799.42 for a total fee of Three Hundred Forty-Two Thousand Seven Hundred Ninety-Nine and 42/100 Dollars (\$342,799.42).
6. This Amendment shall become part of and subject to the terms and conditions of the Agreement, which except as modified herein, remains unchanged and in full force and effect. However, to the extent that the terms and conditions expressly set forth in this Amendment conflict with the terms and conditions of the Agreement, the terms and conditions expressly set forth in this Amendment will prevail. Unless otherwise defined in this Amendment, capitalized terms used herein shall have the meanings assigned to such terms in the Agreement.

By signing below, the undersigned certify that they have read and understand, and agree to be legally bound by this Amendment.

[Signatures follow on the next page.]


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

City OF FRESNO,
a California municipal corporation

GRACEBOUND, INC.,
a California non-profit corporation

By: _____
Georgeanne A. White
City Manager


By: Christina Scott

Name:  _____
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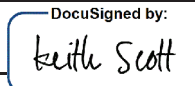
Title: President

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

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By:  _____ 3/19/2024
DocuSigned by:
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Christine C. Charitar
Deputy City Attorney
Date

By: Keith Scott

Name:  _____
DocuSigned by:
9E8253B32AD241A...

Title: CFO

(If corporation or LLC, CFO, Treasurer,
Secretary or Assistant Secretary)

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy

Attachments:
Agreement with GraceBound, Inc. for Mobile Shower Servies
Revised Scope of Work and Budget – Exhibit A

EXHIBIT A

REVISED SCOPE OF SERVICES & BUDGET **Service Agreement between City of Fresno and Gracebound, Inc.**

MOBILE SHOWER OPERATIONS

Gracebound, Inc. will facilitate the operations of two mobile shower and restroom trailers to provide basic hygiene and sanitation opportunities for homeless people within the City of Fresno.

Gracebound, Inc. will work with multiple City of Fresno's departments to coordinate connections to wastewater and other utility services, the Coordinated Entry System, the Homeless Street Outreach (HOPE) team and homeless service providers to effectively engage and serve individuals experiencing homelessness to help prevent the spread of COVID-19.

Mobile Shower operations must include but are not limited to: (1) Coordinating with the Planning and Development Department Homeless Services Division and Regional Wastewater Reclamation Facility to determine sites throughout Fresno to locate the mobile shower trailers; (2) Retrieving trailer from the Wastewater storage yard located at 5607 West Jensen Avenue, transporting each trailer to City approved sites, and returning trailers to Wastewater storage yard. Vehicle(s) transporting the trailers must meet California Vehicle laws and regulations to transport trailers with a GVWR of 13,000 pounds. Driver(s) must possess a valid State of California Class A driver's license. (3) Screening participants for other service opportunities; (4) Operating the mobile shower trailers for 8 hours per day with a minimum of 5 of those hours available for use by homeless participants and at most 3 hours available for cleaning and sanitation of the mobile shower trailers; (5) Connect trailer to City water and sewer connections that the wastewater division deemed appropriate; (6) Fill propane tanks and gas for generators; (7) Make the mobile shower trailers available Monday – Friday on a weekly basis; (8) Provide weekend mobile showers services at least one weekend day (Saturday or Sunday) per quarter; (9) Provide mobile shower services for special events, including events outside of normal business hours, as requested by the City; (10) At no cost to the participant, provide, at a minimum, a hygiene kit, towel, and a clean pair of undergarments; (11) Cleaning and sanitizing the mobile shower trailers after each use and at the end of each day prior to transportation to storage; (12) Enter all participants' information into the Homeless Management Information System (HMIS).

COORDINATION OF SERVICES

Mobile Shower Operation services must be provided as part of a continuum of services available to eligible individuals experiencing homelessness in the City of Fresno.

TARGET POPULATION

Mobile Shower Operation services are intended to target veteran, chronically homeless, underserved populations and unsheltered individuals and families experiencing

homelessness. “Homeless” has the same meaning as defined in Section 578.3 of Title 24 of the Code of Federal Regulations, as that section read on January 10, 2019.

DATA COLLECTION

Gracebound, Inc. is required to collect and report client-level data in accordance with Housing and Urban Development (HUD) Office of Special Needs Assistance Programs (SNAPS) Homeless Management Information System (HMIS) Data Standards, to the local HMIS operated by the Housing Authorities of the City and County of Fresno through a Memorandum of Understanding with the Fresno Madera Continuum of Care or comparable databases are required for use by providers of services for victims of domestic violence, as described in the Violence Against Women Act (VAWA). Reporting into the HMIS database or allowed comparable database is a requirement of State funding. Gracebound, Inc.’s reporting must be consistent in format and data element structure with the Fresno Housing Authority HMIS Program Policies and Procedures Manual and the HUD HMIS Data Standards and Data Dictionary current at the execution of this Agreement. The comparable database will be maintained by the Service Provider and used to collect data and report on outputs and outcomes as required by HUD.

Gracebound, Inc. must maintain records, collect data consistently, track both qualitative and quantitative outcomes, and provide them to the City in a timely manner.

PERFORMANCE OUTCOMES

In addition to quarterly activity reports, progress and outcomes will be monitored through regular meetings, site visits, inspections of client files, and observations of case management meetings. Performance outcomes for Mobile Shower Operations will be measured through the following metrics:

- i. The number of clients served per event and on a monthly basis
- ii. The number and percentage of clients connected to other services, including shelter and permanent housing

| Mobile Shower Operations Budget | |
|--------------------------------------------------------|---------------|
| 12-Month Contract Period: 9/28/2023 – 9/27/2024 | |
| Budget Category | Total |
| <u>Personnel</u> | |
| Salaries, Payroll Taxes, and Benefits | \$ 255,856.46 |
| | |
| <u>Services & Supplies</u> | |
| Sanitization Supplies | \$ 3,000.00 |
| Client Supplies | \$ 16,800.00 |
| Travel Expenses | \$ 15,600.00 |
| HMIS Software and Training | \$ 866.00 |
| Insurance – Auto & Liability | \$ 5,117.00 |
| Office Supplies | \$ 1,250.00 |

| | |
|---------------------------------|---------------|
| Vehicle Lease | \$ 17,100.00 |
| Trailer Supplies & Expenditures | \$ 3,410.00 |
| | |
| Total Non-Personnel | \$ 62,643.00 |
| Direct Costs | \$ 318,999.46 |
| Indirect Costs @ 7% | \$ 23,799.96 |
| | |
| Grand Total | \$ 342,799.42 |
| | |