

TERMS AND CONDITIONS

Community Crime Reduction Programs, ARPA funded

The Recipient and the City agree to the following terms and conditions:

1. APPLICATION INCORPORATED BY REFERENCE

The Recipient's application for the Community Crime Reduction Program is incorporated into this *Recipient Agreement* by this reference, and the representations made in the application are binding upon the Recipient.

2. ACCEPTANCE OF THE PURPOSE PROJECT GRANT REQUIREMENTS

The Recipient will comply with all requirements established by the City; applicable State and federal laws, regulations, administrative directives, and procedures; and local ordinances and resolutions.

The Recipient agrees that all contracts/agreements entered into for the completion of the activities described in the application will contain special provisions requiring contractors to comply with all applicable state and federal laws, regulations, administrative directives, procedures, and local ordinances and resolutions.

The Recipient expressly agrees to repay to the City any funds advanced to the Recipient under this *Recipient Agreement* which the Recipient, its subcontractors or sub-recipient entities, or any public or private agent or agency to which it delegates authority to carry out portions of this *Recipient Agreement*, expends in violation of the terms of this Agreement or the local, state and/or federal statutes and regulations governing the Community Crime Reduction Program.

3. EFFECTIVE DATE AND TIME OF PERFORMANCE

This *Recipient Agreement* takes effect upon execution by the parties and will terminate upon completion of the final project closeout by the City. The activities to be performed by the Recipient will be completed according to the Project Schedule section of the Recipient Application, which by this reference is made a part of this Agreement.

4. SCOPE OF ACTIVITIES/PROJECT SCHEDULE

The Recipient will engage in the activities outlined in the Community Crime Reduction Program application.

5. BUDGET

- I. The approved budget of the Recipient (as signed by an authorized official of the City of Portsmouth) is incorporated by reference as part of the *Recipient Agreement*, with such authorized changes as may be allowed or required through budget amendments.
- II. Budget adjustments must be approved in writing by the City. The Recipient must send the City a letter describing the rationale for a budget adjustment.
- III. If the application review process indicates that a revised budget may be required, the funding period may begin once said revised budget has been received, reviewed, and approved by the City. No fund activity may occur before the beginning of the funding period.

6. AMOUNT OF FUNDING AND METHOD OF PAYMENT

- I. The City will pay the Recipient funds available under this *Recipient Agreement* when approved by the City. The City may agree to make advance payments to the Recipient for activities outlined in Section 4. SCOPE OF ACTIVITIES/PROJECT SCHEDULE upon satisfactory demonstration of need by the Recipient. In expending funds advanced by the City, the recipient agrees to limit expenditures to those items included in the Request for Payment and expressly approved by the City.

- II. The City will reimburse the Recipient for approved, eligible, and necessary expenses according to the documentation submitted by the Recipient to support the expenditures. **The City will not refund the Recipient for any expenses not included in the approved budget** and not clearly and accurately supported by the Recipient's records. Any authorized funds not expended under this funding will revert to the City of Portsmouth upon project completion.
- III. The reimbursement of eligible costs incurred is contingent upon the Recipient's completion of Section 13. SPECIAL PROJECT START-UP CONDITIONS. **If the Recipient cannot comply with the terms and the conditions of this Recipient Agreement, any costs incurred will be the recipient's sole responsibility.**
- IV. If the total cost of completing the project is less than has been projected by the Recipient in the budget (Attachment B), the City may, at its discretion, reduce the amount to be provided under this *Recipient Agreement* to the actual cost of the project.
- V. If the City determines that the Recipient has failed to satisfactorily and timely carry out its responsibilities under this Agreement, the City may revoke the Recipient's authority to draw against the amount described in this *Recipient Agreement*, until and if the City and the Recipient can agree on a plan to remedy the deficiency.
- VI. The City reserves the right to withdraw a commitment for any Community Crime Reduction Program funds that remain unexpended on February 1, 2023.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor pursuant to this Agreement are to be the property of the Recipient and the City, which have exclusive and unrestricted authority to release, publish, or otherwise use, in whole or in part, information relating to it. No material produced in whole or part under this Agreement may be copyrighted or patented in the United States or in any other country without the City's prior written approval.

8. ACCESS TO RECORDS AND PROJECT MONITORING

- I. The Recipient will maintain records of its performance under this Contract and will allow the City access to these records and provide copies if requested during regular business hours. These records will be kept by the contact person for the Recipient for at least three years past the completion date for the final project.
- II. The City or its agents may monitor and inspect all phases and aspects of the Recipient's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of the Recipient's records and accounts. The City will advise the Recipient of any specific areas of concern and provide the Recipient opportunity to propose corrective actions acceptable to the City.

9. PROJECT PROGRESS REPORTING

- I. During the term of this Recipient Agreement, the Recipient will submit four Project Reports. Each report must be submitted within 15 days before receiving payments (re. Introduction, Award Amounts & Payment Dates). A Final Report to the City must be submitted by January 30th, 2024. These reports must provide an overview of accomplishments, a summary of all activities completed during this reporting period, verification of program completion, photos or images, costs incurred, funds remaining, and project completion date. The report must also describe any significant problems encountered.
- II. The City reserves the right to withhold payment of any and all claims associated with the project until the required reports have been submitted and approved by the City.

10. AVAILABILITY OF CITY FUNDS

- I. In all instances, the City reserves the right to distribute funds based on the available funding and project requirements.
- II. Funds must be used for purposes of the particular project specified. The City is not obligated to provide additional funding once a project has been completed.

11. NONDISCRIMINATION

The Recipient will not discriminate against any person or organization based on race, color, religion, creed, sex, age, disability, faith-based organization, or national origin. If a discriminatory policy or practice is discovered, this Agreement shall be canceled without further recourse to the Recipient.

12. MODIFICATION AND ASSIGNABILITY

This *Recipient Agreement* contains the entire agreement between the parties. No statements, promises, or inducements made by either party or agents of either party, which are not included in or authorized by this written Agreement, are valid or binding. This Agreement may not be enlarged, modified, or altered except upon written agreement and does not imply any continuing commitment by the City of Portsmouth beyond the project termination date. The Recipient accepts responsibility for the adherence to the terms of this Agreement by subcontractor or sub-recipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Agreement.

13. SPECIAL PROJECT START-UP CONDITIONS AND GRANTEE FUNDING OBLIGATIONS

The Recipient will not obligate or utilize funds for any activities provided for by this *Recipient Agreement* until:

- I. The Recipient submits to the City written evidence of the firm commitment to the other resources necessary for the completion of the project as defined in Section 5. of this Agreement and the Recipient Application.

The Recipient must have completed all necessary arrangements to assure that those resources are available for commitment to and participation in the project in order to guarantee timely project completion. Unless the Recipient can demonstrate the existence of unusual or extenuating circumstances that justify an extension of time, the City will withdraw the tentative award and reallocate the funds.

The City will release the Community Crime Reduction Program funds to the Recipient when the Recipient has obtained firm commitments from all non-Community Crime Reduction Program funding resources to be involved in the project. The Recipient may not expend or obligate any Community Crime Reduction Program funding until the City determines that this condition has been satisfied.

14. CONSTRUCTION AND VENUE

This *Recipient Agreement* will be construed under and governed by the ordinances of the City of Portsmouth and the laws of the Commonwealth of Virginia. In the event of litigation, the parties agree that the venue shall be in the General District Court of the Third Judicial District in and for the City of Portsmouth, Virginia.

15. HOLD HARMLESS AND INDEMNIFICATION

- I. The Recipient waives any and all claims and recourse against the City, including the right of contribution, for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Recipient's or any sub-recipient's performance under this *Recipient Agreement*.
- II. Further, the Recipient will indemnify, hold harmless, and defend the City against any and all claims, demands, damages, costs, expenses, or liability arising out of the Recipients or any sub-recipients performance under this *Recipient Agreement*. In the event that the City is named as a party in any action relating to activities to be performed by the Recipient or a sub-recipient under this *Recipient Agreement*, the Recipient will notify the City of the action and agrees to provide legal representation and to pay any judgment rendered against the City in the action unless the City undertakes to represent itself.

III. Recipient shall obtain any necessary insurance. If construction or demolition is to be undertaken, the insurance certificate must name the City as an additional insured.

16. RECIPIENT AGREEMENT AMENDMENT

I. The Recipient may request that this *Recipient Agreement* be amended. However, the City will allow an amendment only if the Recipient clearly demonstrates that the modification is justified and will enhance the overall impact of the original project. The City will consider each request to determine whether the modification is substantial enough to necessitate reevaluating the project's original ranking. If warranted, the City will analyze the impact of the proposed modification on the scores assigned to the Recipient's application in the original grant competition.

II. The City will not approve amendments to the scope of activities or the budget that will affect high-priority activities or improvements that would materially alter the circumstances under which the funding was initially ranked.

17. GENERAL TERMS AND CONDITIONS

By signing the face sheet of this *Recipient Agreement*, the Recipient is agreeing to the following:

I. Regulations and Agreement Reports and Procedures. The recipient agrees to comply with all local, state, and federal laws and regulations. In addition, the Recipient agrees to comply with all applicable Recipient Reporting and Payment procedures and all other provisions of this Agreement.

II. Modifications. Any alterations, additions, or deletions to this *Recipient Agreement* that are required by changes in local, state, or federal laws, regulations, and ordinances are automatically incorporated on the date designated by law, regulation, or ordinances. The City shall have the right to make unilateral *Recipient Agreement* amendments in writing, with notice to the Recipient, to conform to local, state, or federal laws, regulations, ordinances, and funds availability. No other waiver or modification of the terms of this *Recipient Agreement* (including the Grantee's application/proposed services) shall be valid unless in writing and duly executed by the parties to be bound thereby.

18. PAYMENT REQUESTS

Invoices. The recipient must submit a request for payments referencing the Community Crime Reduction Program Expenditure and Payment Invoice. Payments will generally be dispersed in four payments; however, this decision is at the discretion of the Committee.

19. COUNCIL APPROVAL

The City is awarding these Funds to support neighborhood projects by community organizations that provide a public benefit to the residents of Portsmouth. The awarding of these funds are subject to City Council approval. Should Council fail to appropriate the funds, this Agreement shall be terminated without recourse for the Recipient.

20. ASSURANCES AND CERTIFICATIONS

- I. By signing the face sheet of this *Recipient Agreement*, the Recipient is making the following assurances and certifications:
- II. Signature Authorized. The Recipient's authorized approving official, by signing the face sheet, acknowledges that there is legal authority to apply for city assistance and that Recipient has the institutional, managerial, and financial capability to ensure the proper planning, management, and completion of the project described in the Recipient Application.
- III. Record Retention. The recipient will retain all records related to this grant for three years after receiving the final payment, and all other pending matters are closed on all completed invoices from these grant funds and the receipt of the Recipient's final progress report.

- IV. Access to Records. Any representative of the City shall have access to and the right to examine any books, documents, papers, and records (including computer records) of the Recipient that are related to this *Recipient Agreement* in order to conduct audits and examinations and to make excerpts, transcripts, and photocopies. This right also includes timely and reasonable access to the Grantee's personnel and program participants for the purpose of interviews and discussions related to such documents. This right of access is not limited to the required three-year retention period but shall last as long as the records are retained.
- V. Publicity and Lobbying. No funds provided under this fund shall be used for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress or General Assembly itself. Nor shall funds be used to pay the salary or expenses of any recipient or agreement, Recipient, or an agent acting for such Recipient related to any activity designed to influence legislation or appropriations pending before Congress or the Virginia General Assembly.
- VI. Public Announcements. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with city money, including this fund, the Recipient shall clearly state (1) the percentage of the total cost of the program or project which will be financed with city money, and (2) the dollar amount of city funds for the project or program. The City also has the right to make public announcements regarding this program.
- VII. Conflict of Interest. The Recipient will establish and observe safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- VIII. Debarment and Suspension. The Recipient certifies to the best of its knowledge and belief, that it and its authorized approving officials and its fiscal agent:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any local, state, or federal department or agency;
 2. Have not within a three-year period preceding the Recipient's signature of this *Recipient Agreement* been convicted or had a civil judgment against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in paragraph (b) of this certification; and
 4. Have not, within a three-year period preceding the Recipient signature on the date of this *Recipient Agreement*, had one or more public transactions (federal, state, or local) terminated for cause or default.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated as follows:

- I. Termination and Modification Due to Loss of Funding. If for any reason, the resources required by the City to fund the Recipient's project are withdrawn from the City, the City may unilaterally terminate or modify the terms of this Agreement to reflect the loss of funding. The City will give the Recipient written notice of the effective date of the modification or termination and, if a reduction in funding is required, will provide the Recipient with a modified project budget.

II. Termination Due to Noncompliance. If the City determines that the Recipient has failed to comply with the general terms and conditions of this Agreement, the project schedule, or any special conditions, and if upon notification of the defect, the Recipient does not remedy the deficiency within a reasonable period to be specified in the notice, the City may terminate this Agreement in whole or in part at any time before the date of completion. The City will promptly notify the Recipient in writing of the decision to terminate.

III. Termination Due to Adverse Environmental Impact. This Agreement will terminate if the Recipient or the City determines that the project would have an adverse impact on the quality of the human environment and that this impact cannot be avoided or sufficiently mitigated by reasonable, cost-effective means.

IV. Effect of Termination. In the event of termination due to the Recipient's failure to comply with the terms of this Agreement or the project's adverse environmental impact, any costs incurred will be the Recipient's responsibility. However, at its discretion, the City may approve requests by the Recipient for reimbursement of expenses incurred. The City's decision to authorize payment of these costs or to recover expended Neighborhood Incentive Matching Grant project funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Recipient to comply with the terms and on whether any failure to comply with the terms of this Agreement was the result of circumstances beyond the Recipient's control.

THE RECIPIENT'S AUTHORIZED REPRESENTATIVE, BY SIGNING BELOW, ACKNOWLEDGES THAT THE RECIPIENT HAS READ THESE TERMS AND CONDITIONS AND AGREES TO ABIDE BY THE SAME.

Signature Authorized Representative

Date