

AGREEMENT

THIS AGREEMENT ("Agreement), made and entered into this ___ day of _____, 2014, by and between the City of Overland Park, Kansas (the "CITY"), and The Salvation Army, a non-profit Illinois corporation ("The Salvation Army").

WHEREAS, the City of Overland Park is receiving an entitlement grant from the Department of Housing and Urban Development for fiscal year 2014, said grant being designated as Community Development Block Grant, and

WHEREAS, The Salvation Army provides emergency assistance and transitional housing for homeless or near-homeless families in Johnson County, including Overland Park families; and

WHEREAS, The Salvation Army's Homeless Services has identified a need to help Overland Park families in need of emergency assistance including overnight lodging; and

WHEREAS, the CITY has approved and proposes to make a grant from the Community Development Block Grant ("CDBG") program, to provide emergency assistance including but not limited to rent, utilities, mortgage and food assistance to lower income Overland Park families, as described in the grant proposal submitted for the 2014 Program Year.

NOW, THEREFORE, in consideration of the promises and covenants of this Agreement, the parties hereto agree as follows:

I. STATEMENT OF SERVICES

The Salvation Army shall use the CDBG grant solely for the purpose of providing emergency assistance including but not limited to rent, utilities, mortgage and food assistance to lower income Overland Park families, as described in the grant proposal submitted for the 2014 Program Year.

The Salvation Army shall provide eligibility determination for applicants for the emergency assistance funded by this grant. The following factors will be used to determine eligibility:

- a. The applicant is a resident of the CITY; and
- b. The total income for all members of the applicant's household does not exceed 80% of the median income of the Kansas City metropolitan area, as determined by the Secretary of Housing and Urban Development.

II. TERM

The term of this Agreement shall be for the period commencing on June 16, 2014, and ending January 30, 2015, subject to the terms and conditions hereinafter contained.

III. FUNDING

The CITY agrees to disburse to The Salvation Army, in quarterly payments, a grant up to \$12,791 from fiscal year 2014 CDBG funds, payment subject to conditions hereinafter stated and those applicable regulations as established by the Department of Housing and Urban Development, Catalog of Federal Domestic Assistance Number 14-218.

The CITY agrees to disburse the CDBG funds on the following schedule:

- a. Funds shall be disbursed by the CITY upon request by The Salvation Army, based on funds expended and costs incurred quarterly. Final request for funds is to be made within thirty (30) days of the termination of this Agreement. The grant will continue for the term specified as long as The Salvation Army is operational and the CITY has not exercised any right to terminate early.
- b. The Salvation Army shall provide to the CITY, within thirty (30) days of the termination of this Agreement, a full accounting of the expenditure of all grant funds. All grant funds unexpended as of the end date of this agreement, shall be retained by or returned to the CITY as unexpended funds.

Any program income derived from the Community Development Block Grant shall be reported to the CITY and shall be used by The Salvation Army for purposes as outlined in this Agreement and subject to the requirements and conditions herein specified and with applicable federal requirements.

The cost and liability to the CITY for work under this Agreement shall not exceed the amount of fiscal year 2014 CDBG funds authorized and available to the CITY for this project and shall be subject to the release of funds by the Department of Housing and Urban Development.

IV. RECORDS AND REPORTS

The Salvation Army agrees to maintain records and submit reports to the CITY on a quarterly basis. Such records and reports, at a minimum, shall include services provided and client totals by low/moderate income categories, race, ethnic group, head of household, city of residence and other information as may be required by the CITY and shall be in a form as approved by the CITY. These records shall also include all documentation pertaining to the applicant's eligibility for the programs funded by this grant. Such records may also include contracts, proposals, invoices, vouchers and other documentation associated with services under this Agreement.

The Salvation Army shall provide the CITY with its policy and procedure for determining dollar amounts to be distributed to clients. The Salvation Army shall provide the CITY with access to all records upon request. The Salvation Army agrees to maintain all records for five (5) years following the termination of this Agreement.

V. SPECIAL REQUIREMENTS

The Salvation Army agrees to comply with applicable CITY zoning ordinances, building code requirements and other applicable CITY and state codes, ordinances, or licensing requirements.

The Salvation Army understands that execution of this Agreement is in no way a waiver or approval of any provision that may be required under applicable law or rules and regulations of the Department of Housing and Urban Development.

The Salvation Army understands and agrees that the administration and expenditure of funds from this grant shall be in compliance with CDBG regulations; provided further, The Salvation Army agrees to be solely responsible for ensuring said compliance. The Salvation Army further certifies that it will comply with the applicable provisions of the Code of Federal Regulations 24 CFR, Part 570, to include, but not limited to, 24 CFR, Section 570.502, and Office of Management and Budget Circulars, to include, but not limited to, Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations, revised June 24, 1997; provided further, that The Salvation Army agrees to comply with applicable federal law and regulations described in 24 CFR, Part 570, Subpart K including the Conflict of Interest provisions at 24 CFR Part 570, Subpart K, 570.611.

The Salvation Army understands that, as a subrecipient, if it expends \$500,000 or more in federal awards during the subrecipient's fiscal year that it must meet the audit requirements of Circular A-133 for that fiscal year. If the funds passed through to the subrecipient are the only federal funds it receives, then the subrecipient may qualify for a program-specific audit instead of a single audit.

On or before the beginning date of this agreement, The Salvation Army agrees to complete and submit a "Certification of Audit Requirement and Schedule of Federal Expenditures" to CITY. A sample form is attached to this agreement. If The Salvation Army meets the conditions above, The Salvation Army agrees to submit the most recent A-133 audit available at the beginning date of this agreement and to provide City a copy of any A-133 audit completed during the agreement period within 30 days of its completion.

Title 31 U.C.S., Section 1352, requires all sub grantees, contractors, subcontractors, and consultants who receive federal funds via the CITY to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

In addition, contract applicants, recipients, and sub recipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the Grant Program Coordinator, Community Services, Department of Planning and Development Services of the CITY, and must be returned to the CITY with other contract documents. It is the responsibility of the general contractor to obtain executed forms from any subcontractors who fall within the provisions of the Code and to provide the CITY with the same.

VI. NON-DISCRIMINATION

A. Non-Discrimination. The Salvation Army agrees that:

1. During the performance of this Agreement or any subcontract resulting thereof, The Salvation Army, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, *et seq.*) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
2. In all solicitations or advertisements for employees The Salvation Army, all subcontractors and vendors shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
3. If The Salvation Army, a subcontractor or vendor fails to comply with the manner in which The Salvation Army, subcontractor or vendor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, The Salvation Army, subcontractor or vendor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the CITY;
4. If The Salvation Army, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, The Salvation Army, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part

by the CITY;

5. The Salvation Army shall include the provisions of paragraphs 1 through 4 above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

B. Age and ADA Discrimination. The Salvation Army further agrees that The Salvation Army shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*), and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project, and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

VII. GENERAL ADMINISTRATION

It is understood and agreed that the written terms and provisions of the Agreement shall supersede all prior verbal statements of any and every official and/or other representative of the CITY and The Salvation Army, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way, the written Agreement.

The parties agree that neither party shall assign or transfer their interest in this Agreement without the written consent of the other.

The failure of the CITY or The Salvation Army to insist on strict performance of any of the terms and conditions herein shall not be deemed a waiver of the right to demand strict performance of that or any other provision at any time thereafter.

The Salvation Army agrees to defend, indemnify, and hold harmless the CITY and its agents and/or employees from any and all claims, settlements, and judgments for personal injury, bodily injury, property damage, and/or death arising out of The Salvation Army or any of its agents', servants', and/or employees' negligent acts and/or failures to act in the performance of this Agreement.

The Salvation Army shall maintain, either through traditional insurance, in whole or in part, or through a risk management reserve fund, in whole or in part, coverage of the types and in such amounts as may be necessary to protect itself and the CITY against all hazards or risks of loss as hereinafter specified, whether such hazards or risks of loss be generated by The Salvation Army, its officers, employees, or agents, and shall provide the CITY with evidence of such coverage. A sample ACORD Certificate of Liability Insurance form is attached to this agreement.

- 1) Commercial General Liability - \$500,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.
- 2) Workers' Compensation and Employers' Liability
 - a) Workers' Compensation – Statutory (Include all states' endorsement)
 - b) Employer's Liability - \$100,000 Each Occurrence
- 3) Comprehensive Automobile Liability - \$500,000 combined single limit per occurrence written in a

comprehensive form, protecting The Salvation Army against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover the operation on and off the site of any automobile, whether it is owned, non-owned, or hired.

VIII. TERMINATION

A. Termination for Convenience

The CITY may, when the interests of the CITY so require, with sixty (60) days notice, terminate this Agreement in whole or in part, for the convenience of the CITY. The CITY shall give written notice of the termination to The Salvation Army, specifying that the Agreement, or a designated part thereof, shall be terminated. In the event the Agreement is terminated for convenience of the CITY, the CITY will disburse funds for costs incurred and funds expended by The Salvation Army prior to the date of termination.

B. Termination for Default

If The Salvation Army is violating any of the conditions of this Agreement or is executing the same in bad faith, the CITY may serve written notice on The Salvation Army of its intention to terminate the Agreement and unless, within seven (7) days after the serving of the notice, a satisfactory arrangement has been made for the continuance thereof, this Agreement shall terminate. The CITY retains the right to withhold the grant or any portion thereof for damages incurred as a result of The Salvation Army's breach of this Agreement.

IX. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

X. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XI. WAIVER

The CITY's failure to act with respect to a breach by The Salvation Army does not waive its right to act with respect to subsequent or similar breaches. The failure of the CITY to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the CITY and The Salvation Army for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the CITY and The Salvation Army with respect to this Agreement.

XIII. GOVERNING LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Kansas.

Executed in triplicate the date first above written.

CITY OF OVERLAND PARK, KANSAS

THE SALVATION ARMY A NON-PROFIT
ILLINOIS CORPORATION

By _____
Carl Gerlach, Mayor

By _____
Bramwell Higgins, Secretary

ATTEST:

ATTEST:

Marian Cook, City Clerk

Major E. Randall Polsley
Treasurer

APPROVED AS TO FORM:

Stephen B. Horner, Senior Assistant City Attorney