

## FUNDING AGREEMENT

This FUNDING AGREEMENT (**Agreement**) is entered by the City of The Dalles, an Oregon municipal corporation (**City**), and Youth Empowerment Shelter, an Oregon nonprofit corporation (**Grantee**).

**WHEREAS**, Grantee submitted a request to the City Council for funding consistent with its May 1, 2023, proposal (**Proposal**), attached to and made part of this Agreement as its **Exhibit A**; and

**WHEREAS**, the City Council, through its budget process, has appropriated sufficient monies (**Funds or Funding**) to award Grantee in furtherance of its Proposal;

**NOW, THEREFORE**, in consideration of both the provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is here acknowledged, the Parties agree:

### 1. **TERM AND TERMINATION**.

A. **Term**. The Parties agree this Agreement's term commences upon its mutual execution and expires June 30, 2024.

B. **Termination**.

(1) **Unilateral Termination**. The Parties agree either Party may terminate this Agreement upon 15 days' advance notice to the other.

(2) **City Termination**. The Parties agree the City may terminate this Agreement immediately upon Grantee's use of Funds for purposes not expressly indicated in its Proposal and after the City dispatches a notice of termination to Grantee. If the City terminates this Agreement pursuant to this **Section 1(B)(2)**, Grantee agrees it may be required (at the City's sole discretion) to return all Funds within 30 days of the notice of termination's date, it may be barred from future Funding requests, or both.

2. **FUNDS GRANTED**. The City agrees to disburse an amount not to exceed **\$25,000.00** to Grantee subject to this Agreement's qualifying terms and conditions. In all events, the Parties expressly agree the City's obligations under this Agreement are contingent on Funding availability through the City's budget process and subject to all applicable federal, Oregon, and local laws regarding the governance of such monies. Plainly, the Parties understand and agree the City's obligation to disburse Funds to Grantee is limited to the degree the City actually appropriates such Funds for the given fiscal year.

3. **LIMITED USE**. Grantee agrees the Funds are only eligible for use to cover its actual costs as described in its Proposal. Grantee further agrees its use of any Funds for a purpose not described by this **Section 3** is a default of this Agreement subject to the City's termination pursuant to **Section 1(B)(2)**.

4. **REPORTING.** Grantee agrees to submit all reporting on its use of the Funds upon request by the City Manager and (in all cases) a final report including a breakdown of how all Funds were actually spent before it may request any additional Funds from the City.

5. **DISBURSEMENT AND RECOVERY.**

A. **Disbursement.** The City agrees to disburse Funding to Grantee within 14 days of this Agreement's mutual execution.

B. **Eligible Costs.** Grantee agrees to use all Funds consistent with eligible costs described in **Section 3**. Grantee further agrees any changes to the Proposal are ineligible for Funding use unless those changes are approved by the City.

C. **Recovery.** Grantee agrees to repay the City all Funds disbursed if it has not cured any default of this Agreement after the City dispatches 21 days' notice of default.

6. **INSPECTION AND RECORDS.**

A. **Inspection.** Grantee agrees the City may inspect the work contemplated by the Proposal or its proposed location (if applicable) at any time during its development, installation, or implementation if the City's inspection is during normal working hours and follows the City's reasonable notice.

B. **Records.**

(1) **Access.** Grantee agrees the duly authorized representatives of the City may, with respect to those pertinent to this Agreement:

(a) access Grantee's financial records and other books, documents, papers, plans, records of shipments, and payments and writings (whether in paper, electronic, or other form);

(b) perform examinations and audits; and

(c) make excerpts, transcripts, and copies.

(2) **Retention.** Grantee agrees to retain and keep accessible all books, documents, papers, plans, records, and writings (with respect to those pertinent to this Agreement, the Funds, and its Proposal) for a minimum of 6 years (or such longer period required by applicable law) following the later of:

(a) this Agreement's termination or expiration; or

(b) the conclusion date of any audit, controversy, or litigation arising from this Agreement.



- (3) Release. Grantee authorizes any incentivizing entity outside of the City to release all relevant information or records concerning the Funds or Proposal to the City, including (without limitation) information on the use of Funds for the Proposal, other incentives offered and received, and inspection results.

## 7. COVENANTS.

- A. Safeguarding. Grantee agrees to vigilantly safeguard all disbursed Funds and maintain financial controls sufficient to protect them and ensure the Funds are used solely for the Proposal. The City reserves the express right to confirm Grantee's compliance with this **Section 7(A)** at any time during this Agreement's term.
- B. No Future Requests until Completion. Grantee agrees it is not eligible for any other Funding requests until it completes its use of the Funds for the Proposal pursuant to the terms of this Agreement.

## 8. DEFAULT.

- A. Acts. Grantee agrees it will be in default of this Agreement upon the occurrence of any of the following events:
- (1) Grantee fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement or applicable law;
  - (2) Any representation, warranty, or statement made by Grantee in this Agreement, its Proposal, or in any documents or reports relied upon by the City to monitor implementation of the uses contemplated by the Proposal, the expenditure of the Funds, or Grantee's performance is untrue in any material respect at the time it was made;
  - (3) The City Manager determines Grantee violated or has likely violated provisions of The Dalles Municipal Code;
  - (4) Grantee **(a)** applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or any substantial portion of its property, **(b)** admits in writing its inability, or is generally unable, to pay its debts as they become due, **(c)** makes a general assignment for the benefit of its creditors, **(d)** commences a voluntary case under the U.S. Bankruptcy Code (as now or hereafter in effect), **(e)** files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, **(f)** fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the U.S. Bankruptcy Code (as now or hereafter in effect), or **(g)** takes any action for the purpose of effecting any of the foregoing listed in this **Section 8(A)(4)**; or



(5) A proceeding or case is commenced, without Grantee's application or consent, in any court of competent jurisdiction, seeking (a) Grantee's liquidation, dissolution or winding-up, or the composition or readjustment of debts, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (c) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing listed in this **Section 8(A)(5)** is entered and continues unstayed and in effect for a period of 60 consecutive days, or an order for relief against Grantee is entered in an involuntary case under the U.S. Bankruptcy Code (as now or hereafter in effect).

**B. Remedies.** Upon the occurrence of Grantee's default under **Sections 8(A)(2), (4), or (5)**, or if Grantee's default under **Sections 8(A)(1) or (3)** is not cured within 21 calendar days of the City's written notice (or such longer periods the City may authorize in its sole discretion), the City may pursue any remedies available under this Agreement, at law, or in equity. Specifically, and without limitation, such remedies include termination of the City's obligation to disburse Funds, return of disbursed Funds, payment of interest earned on the Funds disbursed, and declaration of ineligibility for the receipt of future grants or awards from the City. If, as a result of Grantee's default, the City demands return of the Funds or payment of interest earned on the Funding, Grantee agrees to pay the amount upon the City's demand consistent with **Section 5(C)**.

## **9. GENERAL PROVISIONS.**

**A. Indemnification.** Grantee agrees to indemnify, defend, and hold harmless the City (including its officers, employees, and agents) from all claims, suits, actions, losses, damages, liabilities, costs, and expenses (of any nature) resulting from, arising out of, or relating to Grantee's (including its officers', employees', agents', and subcontractors') activities under this Agreement.

**B. Independent Contractor.** The Parties agree and acknowledge their relationship is that of independent contracting parties and Grantee is not an officer, employee, or agent of the City (as those terms are used in ORS 30.625 or otherwise).

**C. Tax Currency.** Grantee agrees (and by executing this Agreement, certifies under penalty of perjury) it is, to the best of its knowledge, not in violation of any tax laws described in ORS 305.380.

**D. Survival.** The Parties agree the provisions of this Agreement that, by their sense and purpose, should survive its expiration or termination will so survive; without limitation, such surviving provisions expressly include **Sections 4, 6, and 9(A)**.



- E. Amendment. The Parties agree they may make modifications to this Agreement at any time but only upon their mutual written agreement.
- F. Governing Law and Venue. The Parties agree this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon and the exclusive venue for all actions relating to this Agreement shall be in the Circuit Court of the State of Oregon for Wasco County.
- G. No Waiver. The Parties agree a Party's failure to insist upon strict adherence to a provision of this Agreement on any occasion shall not be considered a waiver of that Party's rights or deprive that Party of the right to thereafter insist upon strict adherence to that or any other provision of this Agreement.
- H. Assignment. The Parties agree Grantee shall not assign or transfer any interest in this Agreement without the City's prior written consent and any such assignment or transfer (if approved) is subject to such conditions and provisions the City may deem necessary. Grantee further agrees no City approval of any assignment or transfer shall be deemed to create any obligation of the City in addition to those set forth in this Agreement nor will the City's approval of any assignment or transfer relieve Grantee of any of its duties or obligations under this Agreement. The Parties agree this Agreement binds and benefits the Parties and their respective and permitted successors, agents, and assigns.
- I. Integration. The Parties agree this Agreement represents their full and final understanding and supersedes all prior or contemporaneous negotiations and agreements between them.
- J. Severability. The Parties agree any provision of this Agreement deemed illegal or unenforceable is severed from this Agreement and the other provisions remain in full force and effect.
- K. Counterparts. The Parties agree this Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the Parties.

***Continues on next.***



- L. Notices. The Parties agree all notices required or permitted to be given under this Agreement shall be deemed given and received two (2) days after email to or deposit in the United States Mail, certified or registered form, postage prepaid, return receipt requested, and addressed:

*To the City:* City Manager  
City of The Dalles  
313 Court Street  
The Dalles, OR 97058

*To Grantee:* Executive Director  
Youth Empowerment Shelter  
514 East 9<sup>th</sup> Street  
The Dalles, OR 97058

**IN WITNESS WHEREOF**, the Parties have duly executed this **FUNDING AGREEMENT** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF THE DALLES**

**GRANTEE**

\_\_\_\_\_  
Matthew B. Klebes, City Manager

\_\_\_\_\_  
Livia Christensen, Executive Director

**ATTEST:**

\_\_\_\_\_  
Amie Ell, City Clerk

