

## **AGREEMENT**

This agreement ("Agreement") is effective July 1, 2020, and entered into by and between the City of San Luis, Arizona, a municipal corporation of the State of Arizona, at City of San Luis c/o City Manager 1090 East Union Street, San Luis, Arizona 85336 and P.O. Box 1170 San Luis, Arizona 85349 (Mailing address by U.S. Postal Service) "CITY" and AMBERLY'S PLACE, INC., a nonprofit organization, at Amberly's Place, Inc. c/o Executive Director, 1310 S. 3<sup>rd</sup> Avenue, Yuma, Arizona 85364, "AMBERLY'S PLACE." The CITY and AMBERLY'S PLACE may be referred to singularly as the "Party" and collectively as the "Parties."

WHEREAS, AMBERLY'S PLACE was established in 2000 as a safe haven for victims of domestic violence, sexual assault and child victim crimes; and

WHEREAS, AMBERLY'S PLACE provides a service vital to the health and welfare to the residents of the CITY; and

WHEREAS, the CITY is desirous of supporting AMBERLY'S PLACE;

NOW, THEREFORE, the Parties in consideration of the above recitals and these mutual covenants and stipulations, agree:

### **I. PERFORMANCE**

AMBERLY'S PLACE agrees to perform:

A. On a twenty-four (24) hours per day, seven (7) days per week basis provide a Crisis Response Sexual Assault/Domestic Violence/Child Abuse Advocate to coordinate services and reduce trauma to all primary and secondary victims and their families as may be referred by the San Luis Police Department.

B. Coordinate with the San Luis Police Department to provide medical exams for child abuse and sexual assault victims.

C. Provide access to a victim-friendly center (AMBERLY'S PLACE) for all victims of sexual assault, domestic violence, and child victim crimes.

D. Seek grants and corporate sponsorships to improve and expand available services.

E. Maintain accurate records of all monies received and disbursed. AMBERLY'S PLACE shall maintain an accounting system which complies with generally accepted accounting principles, including, but not limited to, SOP 78-10, FASB 116 and 117 as issued by the American Institute of Certified Public Accountants, and with the AICPA Audit Guide for Non-profit

July 1, 2020 through June 30, 2021

Page 1 of 9

Corporations and shall separately account for all funds provided by the CITY under this Agreement.

F. Annually provide the CITY with names and addresses of officers or directors, bylaws, and articles of incorporation and amendments thereof for AMBERLY'S PLACE. If any change of officer occurs and/or director, bylaws or articles of incorporation, AMBERLY'S PLACE shall also provide notice of the change within thirty (30) days thereafter. All documentation required by this Agreement shall be reviewed by AMBERLY'S PLACE'S Board of Directors prior to submission and shall be filed with the City Clerk within thirty (30) days after the period stated. The required reports and records are set forth:

1. Quarterly records of revenue and disbursements of monies received from the CITY, and
2. A semiannual status report regarding monies received for the CITY. The report shall contain analytical memoranda which:
  - (a) Lists travel activities;
  - (b) Lists capital expenditures;
  - (c) Describes the results of activities and expected achievements;
  - (d) Describes program effectiveness;

G. The City Manager may also require AMBERLY'S PLACE to provide a brief monthly statement or status report in an agreed-upon form.

H. To assess the impact of the efforts of the AMBERLY'S PLACE, the CITY shall evaluate AMBERLY'S PLACE'S performance relative to the performance criteria set forth herein. And additional information desired by the CITY, which is relevant and necessary to the CITY'S evaluation shall be provided by AMBERLY'S PLACE.

## **II. THE CITY SHALL PROVIDE THE FOLLOWING**

- A. Provide funds as directed by the City Council to AMBERLY'S PLACE for the amount provided in this Agreement, unless terminated as provided in this Agreement, that amount which is provided in the annual budget of the CITY. Such sum is to be disbursed monthly.
- B. The method of payment shall be:

1. AMBERLYS PLACE shall submit a request for payment monthly to the CITY'S Director of Finance detailing the proposal's expenditures and the actual expenditures to date.
  2. Upon approval of the request for payment by the CITY, the CITY'S Director of Finance shall make payments within fifteen (15) days to AMBERLYS PLACE, excepts as provided in subsection C below.
- C. The CITY may withhold payment, in whole or in part, as may be necessary to protect it from loss because of:
1. AMBERLYS PLACE'S failure to render acceptable services, as stated in the performance criteria of Section I, Performance. The City Manager, or designee, shall investigate and monitor the quality of AMBERLYS PLACE'S services to determine whether such services are acceptable. Upon determination by the City Manager that acceptable services are not being rendered, the City Manager shall notify AMBERLYS PLACE of the specific deficiencies in performance and provide a reasonable time for AMBERLYS PLACE to rectify said deficiencies. In no event shall such time to rectify exceed ninety (90) days. Whether or not AMBERLYS PLACE'S services are acceptable will be the CITY'S exclusive decision.
  2. AMBERLYS PLACE'S failure to supply information, records or reports as required.
  3. AMBERLYS PLACE'S failure to comply with documentation requirements or accounting procedures.
  4. AMBERLYS PLACE'S failure to allocate money received from the CITY for the purpose described in this Agreement.

### **III. FINANCIAL SUPPORT AND TERM OF AGREEMENT**

- A. The term of the Agreement shall be for one year commencing on July 1, 2020, and ending on June 30, 2021.

- B. The CITY agrees to pay AMBERLY'S PLACE \$42,000.00 for services to be provided by AMBERLY'S PLACE under this Agreement during the CITY's fiscal year 2020-2021.
- C. Funding of the Agreement shall be subject to the annual appropriation of funds for this activity by the City Council under the required budget process of the CITY.
- D. AMBERLY'S PLACE may request and receive, as available, from the Finance Department of the CITY, certain specified CITY surplus items as required for AMBERLY'S PLACE'S operations. Determination of which surplus items are available to AMBERLY'S PLACE shall be at the sole discretion of the CITY.
- E. Renewal of this Agreement beyond will be contingent upon AMBERLY'S PLACE performance under this Agreement. If AMBERLY'S PLACE'S performance does not, in all material respects, meet the minimum requirements as described in Section I, Performance of this Agreement, this Agreement may not be renewed by the City Council.
- F. Nothing in this Agreement shall preclude the CITY from contracting separately with AMBERLY'S PLACE for services to be provided besides those provided in this Agreement upon terms and conditions to be negotiated by the CITY and AMBERLY'S PLACE.

#### **IV. TERMINATION**

This Agreement may be terminated by the CITY before the end of the term of this Agreement if any of the following occur:

- A. With cause, by providing ninety (90) day notice to AMBERLY'S PLACE. Prior to such termination, the CITY shall notify AMBERLY'S PLACE of the specific grounds for termination and provide a reasonable time for remedial action by AMBERLY'S PLACE. In no event shall such time to remedy exceed ninety (90) days.
- B. By mutual written consent of both Parties.
- C. For breach or default by AMBERLY'S PLACE of any of its obligations under this Agreement.

#### **V. INDEMNIFICATION**

To the fullest extent permitted by law AMBERLY'S PLACE shall indemnify and hold harmless the CITY, its agents and employees from and against all claims, damages, losses, expenses, and injury to property or persons (including death), including but not limited to attorney's fees, caused in whole or in part

by any negligent act or omission of AMBERLY'S PLACE, or anyone directly or indirectly employed by AMBERLY'S PLACE for whose acts any of them may be liable, regardless of whether or not it is caused by a Party indemnified hereunder, whether authorized by AMBERLY'S PLACE or not, including theft by AMBERLY'S PLACE or any of its officers, agents, employees, guests, patrons, invitees or trespassers, arising out of or resulting from this Agreement.

No Personal Liability. No member, official or employee of the CITY shall be personally liable to AMBERLY'S PLACE, or any successor or assignee, (a) if any default occurs or breach by the CITY, (b) for any amount which may become due to the AMBERLY'S PLACE or its successor or assign, or (c) under any obligation of the CITY under this Agreement.

## **VI. INSURANCE**

AMBERLY'S PLACE shall, at AMBERLY'S PLACE'S expense, secure and maintain during the term of this Agreement commercial general liability insurance including bodily injury, property damage, contractual, personal injury, and products, completed operations. Liability limits shall be no less than \$1,000,000 per occurrence combined single limit and shall be primary to any other coverage available to the CITY. The CITY shall be named as an additional insured, and certificates of insurance for the requirements herein shall be delivered to the CITY prior to the commencement of this Agreement. Failure to provide required coverage and compliance with the terms and conditions of this Agreement shall not waive the contractual obligations herein. If the policy or policies shall be canceled by the insurance company or AMBERLY'S PLACE during the term of this Agreement, AMBERLY'S PLACE and the insurance company shall provide thirty (30) days written notice to the effective date of such cancellation or termination to the CITY

## **VII. GENERAL CONDITIONS**

- A. Nondiscrimination. AMBERLY'S PLACE shall not discriminate against any person based on race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964), and with the Americans with Disability Act of 1990. In addition, AMBERLY'S PLACE shall include similar requirements of subcontractors in any contracts entered into for performing AMBERLY'S PLACE'S obligations under this Agreement.
- B. Financial Review.
  - 1. AMBERLY'S PLACE shall make their financial records available for inspection by the CITY, or its designee, upon reasonable notice during normal business hours of the CITY.

2. If the CITY desires a financial audit by a certified public accountant of the AMBERLY'S PLACE'S financial records to verify the use of CITY funds according to the terms and audit. AMBERLY'S PLACE will not be responsible for the cost of such an audit if requested by the CITY and are entitled to a copy of any resulting reports that are received by the CITY.

- C. Compliance with Law. AMBERLY'S PLACE shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, AMBERLY'S PLACE shall include similar requirements of subcontractors in any contract entered into for performing AMBERLY'S PLACE obligations under this contract.
- D. Binding on Successors. The covenants and conditions herein contained apply to and bind the heirs, successors, executors, administrators, and assigns of the Parties.
- E. Attorney Fees and Costs. If any action, suit proceedings are brought for failure to observe any of the terms, covenants, or provisions of this Agreement, the prevailing Party shall be entitled to recover as part of such action or proceeding, all litigation, arbitration and collection expenses, including, but not limited to witness fees, court costs, and reasonable attorney fees.
- F. Laws Governing. This Agreement shall be governed by the laws of the State of Arizona, as to validity, interpretation and performance.
- G. Venue. Any and all suits for any and every breach of this Agreement, or other judicial proceeding for the enforcement or interpretation of this Agreement shall be instituted and maintained in any court of competent jurisdiction in the County of Yuma, State of Arizona.
- H. Waiver. The failure of either Party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, or any delay in exercising any rights or remedies, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either to insist upon strict performance of this Agreement.
- I. Severability. If any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Arizona, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- J. Integration. This Agreement contains the entire Agreement between the parties, and no oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in

this written Agreement, or specifically referred to in this written Agreement shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.

- K. No Partnership. Nothing in the Agreement is intended or shall be construed to constitute a partnership or joint venture between the parties, and neither Party shall be deemed the principal, agent, officer, or member of the other.
- L. Time is of the Essence. Time is of the essence in this Agreement. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of AMBERLYS PLACE of any obligation shall apply only to the particular transaction to which it relates, and it shall not apply to any other obligation or transaction.
- M. Binding Arbitration. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration under the Arizona Uniform Rules of Procedure for Arbitration in effect unless the parties mutually agree otherwise. Demand for arbitration shall be filed in writing with the other Party to this Agreement.
- N. Conflict of Interest. This contract shall be subject to the Conflict of interest provisions of A.R.S. § 38-511, as amended.
- O. Notices. Any business communications in connection with this Agreement may be provided by email. All legal notices or demands related to this Agreement must be provided in writing and sent to the receiving Party at the address in the first paragraph of this Agreement. All notices to be given under this Agreement by either Party to the other, shall be considered validly given and fully received when made in writing and delivered or refused delivery by major commercial delivery courier service or mailed so it requires signature by the recipient or by process service or such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective.
- P. Compliance with A.R.S. § 23-214. A.R.S. §23-214 imposes requirements upon employers to verify the employment eligibility of all of its employees as set forth in that statute and its related definitions (e-verify). Both the CITY and AMBERLYS PLACE will not enter into a contract with any Company or its providers or subcontractors not in compliance with the requirements of A.R.S. § 23-214. Both the CITY and AMBERLYS PLACE represents that it complies with the law and will continue to comply. By signing below, each represents and warrants they fully comply with all federal, state, and local laws, rules, and regulations regarding employment eligibility of all its employees, including use of the requirements of A.R.S. § 23-214, and they shall remain in compliance during the term of this Agreement.

- Q. Business License. AMBERLY'S PLACE shall obtain a San Luis, Arizona Business License.
- R. Force Majeure. If AMBERLY'S PLACE or CITY are prevented or materially restricted from performing any of their obligations under this Agreement by an event of force majeure, then the obligations of each Party shall be suspended or reduced to the extent made necessary by the event. As used in this section, "force majeure" means any act or cause not reasonably within the control of the Party whose ability to perform is impaired and which that Party could not have prevented by exercising reasonable diligence. This includes, but is not limited to, acts of God, fire, flood, explosions, strikes or labor disputes over which the affected Party has no control, sabotage, riots, civil commotion, acts of civil or military authority, wars or material changes in applicable business laws or regulations.
- S. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement and that all necessary actions have been taken to give full force and effect to this Agreement.
- T. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of this Agreement.
- U. Counterparts. This Agreement may be executed in counterparts, any of which shall be deemed to be an original.
- V. Ratification. Acts, taken pursuant to this contract, but prior to its execution are hereby ratified and confirmed.

[Intentionally left blank, signature page follows]

This Agreement shall inure to the benefit of and bind the heirs, legal representatives, assignees, and successors of the respective parties.

The parties have executed this Agreement in Yuma County, Arizona.

**City of San Luis, Arizona**

\_\_\_\_\_  
Gerardo Sanchez, Mayor

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Sonia Cornelio, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Kay Marion Macuil, City Attorney

**Amberly's Place,  
Arizona Non-Profit Corporation**

\_\_\_\_\_  
Diane Umphress, Executive Director

Date: \_\_\_\_\_