

## SUBCONTRACTOR AGREEMENT

This SUBCONTRACTOR AGREEMENT (this “**Agreement**”) is effective as of September 1, 2020 (the “**Effective Date**”), by and between Michigan Saves, Inc. (“**Michigan Saves**”), a Michigan corporation, and the City of Ann Arbor (“**Subcontractor**”), a Michigan municipal corporation. Michigan Saves and Subcontractor each are sometimes referred to herein as a “**Party**,” and together, as the “**Parties**.”

### RECITALS

WHEREAS, Michigan Saves is a nonprofit corporation, charged with certain responsibilities set forth under a grant awarded by Ann Arbor Community Foundation and Funders’ Network covering a Grant Period from May 8, 2020 through May 8, 2022 (the “**Grant**”);

WHEREAS, Michigan Saves and Subcontractor agreed to establish a working relationship to support the performance of work under the Grant; and

WHEREAS, the Parties have identified the areas of work under the Grant that are Subcontractor's responsibility.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties covenant and agree as follows:

### AGREEMENT

#### 1. Engagement of Subcontractor.

1.1 **Precedence of Grant Terms and Conditions.** Subcontractor acknowledges and agrees that Michigan Saves funding for the Services (as defined herein) is expressly subject to and conditioned upon the terms and conditions of the Grant and such terms and conditions shall have precedence hereunder.

1.2 **Services.** Subject to the terms and conditions of this Agreement and the Grant, Michigan Saves engages Subcontractor to perform the work and services (the “**Services**”) specified in Schedule A attached hereto and incorporated herein (the “**Scope of Work**”), to be completed in the time and under the budget specified in the Scope of Work.

2. **Modification of Services.** Michigan Saves reserves the right to (a) modify the Services during the Term, including the addition to or reduction in the Services and/or any other modifications Michigan Saves deems necessary, and (b) request additional personnel to facilitate completion of the Services. If Michigan Saves elects to modify the Services, Michigan Saves shall provide to Subcontractor a change request containing details of the proposed modification. If a Change Request results in a reduction in the Services or the termination of any Statement of Work, as of the effective date of such Change Request there shall be a reduction in amount payable to Subcontractor for the affected Services, which reduction shall be based on a good faith determination by the parties and set forth in the Change Request.

3. **Independent Contractor Status.** Each Party to this Agreement is and shall act as an independent contractor. Except as may be specifically set forth in the Agreement, neither Party to this Agreement shall have any authority or control over the other. Neither Party shall have the power to bind the other Party, except to the extent specifically provided and set forth herein. Nothing contained in this Agreement shall be construed as providing for the sharing of profits or losses arising from the efforts of either or both of the

Parties hereto, and each Party shall be and is responsible to bear all of the costs, expenses, liabilities, and fees incurred by it in performing under this Agreement.

4. **Performance.** Subcontractor agrees that time is of the essence in the performance of Subcontractor's obligations under this Agreement. Subcontractor shall notify Michigan Saves immediately upon becoming aware of any facts or circumstances that may be expected to jeopardize the timely and successful completion of any Services.

5. **Cooperation, Records and Audits.**

5.1 **Cooperation.** In the course of performing Services, Subcontractor agrees to cause its employees and contract workers (the "**Personnel**"), its subcontractors, consultants, independent contractors, and agents (collectively, the "**Subcontractor Representatives**") to cooperate with Michigan Saves in furtherance of the proper completion of the Services. Subcontractor further agrees to assist Michigan Saves upon the reasonable request of Michigan Saves with respect to any certificates, responses, documentation, data, information or reports Michigan Saves is required to prepare for or deliver to the Grantor pursuant to the Grant as it relates to Subcontractor's performance of Services. Without in any manner limiting the preceding, Subcontractor shall provide any and all information required by Michigan Saves to comply with Michigan Saves reporting obligations under the Grant.

5.2 **Records and Audits.** Subcontractor shall keep, maintain and preserve accurate books, records and documentation as they relate to the Services performed or money received under this Agreement, including without limitation, financial and accounting records and evidence pertaining to this Agreement, all as required by and in accordance with the terms and conditions of the Grant. Subcontractor shall fully and promptly cooperate with Michigan Saves in conjunction with any audits or monitoring reviews conducted by the Grantor under the terms of the Grant.

6. **Subcontractor's Covenants, Representations and Warranties.** Subcontractor hereby covenants, represents, and warrants to Michigan Saves that: (a) Subcontractor has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement; (b) Subcontractor will perform all Services hereunder in a manner that complies with all applicable laws, ordinances and regulations; (c) Subcontractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services; (d) Subcontractor will use commercially reasonable efforts to use efficiently any resources or services necessary to provide the Services that are separately chargeable to Michigan Saves; (e) Subcontractor will use commercially reasonable efforts to perform the Services in the most cost effective manner consistent with the required level of quality and performance; and (f) Subcontractor warrants that, in performing the Services and delivering any work product to Michigan Saves, Subcontractor will not violate any applicable law, rule, or regulation, or any contracts with third parties.

7. **Indemnification.** To the extent not limited by law, Subcontractor shall indemnify, defend (at Subcontractor's sole expense), and hold harmless Michigan Saves and Grantor, affiliates of Michigan Saves, representatives, officers, directors, shareholders, employees, agents, successors and assigns (the "Indemnified Parties"), from and against any and all claims for bodily injury, death, or damage to property, demands, damages, actions, investigative and repair costs, attorneys' fees, consultants' fees and other costs ("Claims") which arise or are in any way connected with the Services provided under this Agreement by Subcontractor or its agents, including but not limited to, any and all claims, losses, liabilities, demands, actions and causes of action of all kinds by reason of any actual or alleged improper use or infringement of any patent, copyright, trademark, trade name, or proprietary right of any third party arising out of any Services. These indemnity and defense obligations shall apply to acts or omissions, negligent or willful misconduct of Subcontractor, its employees or agents. Subcontractor shall not be obligated to indemnify

and defend Michigan Saves or Grantor for Claims for such party's negligence or willful misconduct. Subcontractor's indemnification and defense obligation hereunder shall extend to Claims occurring during this Agreement and after termination until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable laws.

8. **Insurance**. Prior to commencing the Services, the Subcontractor shall procure and thereafter maintain, at its own expense, Worker's Compensation and Employer's Liability Insurance, Automobile Insurance Commercial General Liability Insurance, and all insurance required of the Subcontractor under the Grant or otherwise typically maintained for the provision of work similar to the Services. Evidence of such insurance shall be furnished to Michigan Saves upon request.

9. **Term and Termination**. The term of this Agreement shall begin on the Effective Date and shall continue until the completion of all the Services, as set forth in the applicable Scope of Work, unless earlier terminated by the Parties in accordance with this Section (the "**Term**"). Michigan Saves may immediately terminate this Agreement upon: (a) the termination of the Grant or revocation of or material reduction in funding for the Grant, for any reason; (b) the Grantor's reduction of the scope of Michigan Saves's overall role in the Grant project, where such reduction is related to the Services to be provided by Subcontractor set forth in the Scope of Work; (c) the Grantor's disapproval of or request for replacement of Subcontractor for any reason whatsoever; (d) Subcontractor's breach of this Agreement, and ensuing failure to cure such breach of this Agreement within thirty (30) days after receipt of notice of such breach. Upon termination for any reason, Subcontractor shall submit a final invoice for any Services performed in connection therewith. Subcontractor may terminate this Agreement upon failure of Michigan Saves to cure any breach in its payment obligations under this Agreement within 30 days after receipt of notice of such breach.

10. **Solicitation of Employees**. During the Term of this Agreement and for a period of six (6) months following termination of this Agreement, neither Party shall (a) induce or attempt to induce any employee of the other Party or any of its affiliates (the "**Non-Soliciting Party**") to terminate, or in any way interfere in any material respect with, the relationship between such employee and the Non-Soliciting Party, or (b) hire directly or through another entity any person who was an employee of the Non-Soliciting Party at the date of termination of this Agreement; provided, however, that this Section, shall not apply to employees (i) who have no involvement with the work being performed under this Agreement, (ii) whose employment was terminated by the Non-Soliciting Party prior to the date of solicitation or hiring, or (iii) whose employment was terminated by such employee with the Non-Soliciting Party more than six (6) months prior to the date of solicitation or hiring.

11. **Dispute Resolution**. If a dispute arises out of or relates to this Agreement, the parties shall endeavor to settle the dispute through direct discussion and good faith negotiation. In the event that any dispute, controversy, or claim between the parties arising out of or relating to this Agreement cannot be settled by direct discussion after a period of thirty (30) days, the parties agree to have the dispute, controversy, or claim submitted first to non-binding, facilitative mediation with the assistance of a mediator who is mutually consented to by the parties to the dispute. The costs of mediation process shall be shared equally among the parties to the dispute and each party shall be responsible for their own legal fees, if any, incurred through the mediation process. The mediation shall be conducted in Ingham County, Michigan. If after a good faith effort the dispute has not been fully resolved by the mediation process, the parties may pursue any other method of resolution. In the event of any dispute between Michigan Saves and the Subcontractor, the parties agree not to make any release or disclosure of the dispute, except (a) to their respective employees and professional advisors who have a need to know and who agree to keep the information about the dispute confidential, and (b) except as necessary to pursue legal remedies; and provided, further, that the foregoing shall not prevent the Subcontractor from disclosing such information to the extent its counsel deems such disclosure necessary to comply with applicable laws.

12. **Governing Law.** This Agreement shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to its choice of law rules.

13. **Project Management.** In performing the Services under the Agreement, Subcontractor shall cooperate with and provide project-related information as may be reasonably requested by Michigan Saves to any party designated by Michigan Saves and shall follow and observe the agreed project management methodology and standards and shall use the agreed project management and tracking software tools.

14. **Assignment/Subcontracting.**

14.1 Subcontractor shall not have the right to assign this Agreement or to assign or delegate any of its duties or obligations under this Agreement to any other party (whether by operation of law or otherwise), without the prior written consent of Michigan Saves. Any purported assignment in violation of this Section shall constitute a material default under this Agreement and shall be null and void. Further, Subcontractor may not assign the right to receive money due under the Agreement without the prior written consent of Michigan Saves.

14.2 Subcontractor shall not subcontract out any of Subcontractor's obligations under this Agreement without the express prior written consent of Michigan Saves. In the event Subcontractor requests the use of subcontractors and such request is approved by Michigan Saves, Subcontractor agrees to enter into a written agreement with the subcontractor(s) that carries through those provisions of the Grant which have been passed through in this Agreement to Subcontractor. Michigan Saves reserves the right to review and approve any agreement entered into by Subcontractor pursuant to this subsection.

14.3 Regardless of whether Subcontractor is permitted to subcontract any of its obligations under this Agreement, Subcontractor shall remain primarily and directly responsible for such obligations. Michigan Saves shall consider Subcontractor as the sole point of contact with regard to contractual matters.

15. **Notices.** Any notice given to a Party under this Agreement must be written and shall be deemed effective, if addressed to such Party as addressed below upon (a) delivery, if hand delivered; (b) receipt of a confirmed transmission by facsimile or by electronic mail (return receipt); (c) the third (3rd) business day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (d) the next business day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

If to Michigan Saves:

Michigan Saves, Inc.  
Attn: Mary Templeton, President and CEO  
230 N. Washington Square, Suite 300  
Lansing, MI 48933  
Fax: (517) 484-6549

If to Subcontractor:

City of Ann Arbor  
Attn: Missy Stults, Sustainability and Innovations  
Manager  
301 E. Huron Street  
Ann Arbor, MI 48104  
Fax: (734)994-8991

16. **No Waiver of Default.** The failure of a Party to insist upon strict adherence to any term of this Agreement shall not be considered a waiver or deprive the Party of the right thereafter to insist upon strict adherence to that term, or any other term, of this Agreement.

17. **Severability.** Each provision of the Agreement shall be deemed to be severable from all other provisions of the Agreement and, if one or more of the provisions of the Agreement shall be declared invalid, the remaining provisions of the Agreement shall remain in full force and effect.

18. **Amendment.** Unless otherwise stated herein, no amendment, modification or variation of the terms of this Agreement shall be valid unless made in writing, signed by both Parties.

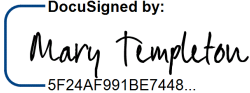
19. **Complete Agreement.** This Agreement, together with all schedules and exhibits attached hereto, contains all the terms and conditions agreed upon by the Parties hereto with reference to the subject matter hereof and supersedes all prior agreements, written or oral, and negotiations with respect to the subject matter hereof.

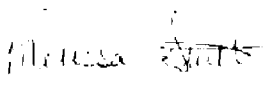
20. **Third Party Beneficiary.** The Grantor is an express third-party beneficiary of the provisions of this Agreement that expressly confer rights upon the Grantor.

The Parties have executed this Agreement on the date first written above.


**Michigan Saves, Inc.**

**City of Ann Arbor**

By:   
Mary Templeton  
Its President and CEO  
Date: 12/23/2020

By:   
Print Name: Missy Stults  
Title: Sustainability and Innovations Manager  
Date: December 14, 2020

 12/16/2020  
TOM CRAWFORD, CITY ADMINISTRATOR

 12/15/2020  
STEPHEN POSTEMA, CITY ATTORNEY

**SCHEDULE A****Scope of Work and Budget**

The City of Ann Arbor will serve as a member of the Core Planning Team for the project, which involves attending and contributing to monthly meetings, and helping to design, advertise, and support implementation of the program. In addition, the City will hire and supervise two program assistants to help develop the Aging in Place Efficiently program and will help with advertising the program to low-income seniors in the community.

**Due Dates**

Unless otherwise specified:

- All year one tasks must be completed by August 30<sup>th</sup>, 2021.
- All year two tasks must be completed by August 30<sup>th</sup>, 2022

| <b>Line Item/Activity</b>               | <b>Notes</b>  | <b>P4P Yr 1</b> | <b>Match Yr 1</b> | <b>Total Yr 1</b> | <b>P4P Yr 2</b> | <b>Match Yr 2</b> | <b>Total Yr 2</b> | <b>Grand Total</b> |
|---|---|-----------------|-------------------|-------------------|-----------------|-------------------|-------------------|--------------------|
| Program Assistant (A2)                  | The City of A2 will hire 2 part-time program assistant to help design the full program (the City will provide up to \$5,000 per year in in-kind support for these positions). | \$3,000         | \$3,000           | \$6,000           | \$3,000         | \$3,000           | \$6,000           | \$12,000           |
| Advertising and recruiting into program | E.g., signs on AAATA buses, mailings, materials for sharing, etc.   | \$500           | \$500             | \$1,000           | \$500           | \$500             | \$1,000           | \$2,000            |

**Budget**

Unless modified through a new scope of work, the budget for the activities listed above is:

- \$14,000 over two years with \$7,000 in year one and \$7,000 in year two.

**Payments**

Payments will be administered annually, at the start of each program year. Sub-contractors will be responsive for reporting on activities completed and providing details for how funds were allocated.