



Agenda Item Report

City Commission - Mar 21 2023

Department	Staff Contact
Planning & Development Services	Danelle Walters, Eileen Phillips,

Recommendations

Receive presentation from Pallet Shelter and consider waiving the bid requirements and authorizing the City Manager to execute the purchasing contract with Pallet Shelter for the shelter village project.

Executive Summary

At their December 20, 2022 meeting, the City Commission provided their support to explore the development of a modular shelter village utilizing funds from the City's American Rescue Plan (ARP) allocation.

The City has been working with Pallet Shelters and their team of experts on this project. Pallet Shelter provides best practices for the dignified sheltering of our neighbors that are experiencing homelessness. Their cabin units provide privacy and community. Their village model includes 24/7 site operations, wrap around services, service provider presence, and navigation services among others. Staff feels strongly that the product and related services that Pallet Shelter brings to a project align with the City's goals and vision for providing for those who are experiencing homelessness.

Pallet Shelter will be presenting an overview of their products and model standards. Staff is still finalizing the appropriate amount of cabins and common amenities for the site, therefore we are requesting to purchase no more than 75 cabins at this time hoping to finalize this number within then next few days. The City will be utilizing the two bathroom/shower trailers as well as the laundry trailer the City owns at the site.

Bid Requirement Waiver Request

Pallet Shelter was selected based on staff research and in-person exposure to the product and the services. Pallet Shelter is able to offer the following items to the City in conjunction with the purchase of the cabin units:

- Patented shelter design with rapid construction
- Climate controlled units with heat and air conditioning
- Community Dignity Standards for all Pallet villages
- Dedicated public education and engagement team assistance
- Dedicated project planning assistance
- Access to provider networks
- Peer networking and consultation for others utilizing Pallet villages

- Timeliness of delivery and install to meet our project metrics.

The City originally approached this project utilizing an cooperative bid structure, however due to the difference in climate and location the base cabins that were included in the cooperative bid were ultimately not the same product that was needed in Lawrence. The cooperative bid product was for the pacific northwest geographical area and did not require the amount of insulation and weather-safety aspect of the cabins that are required for our location. Based on the above reasons and this inability to use the cooperative bid, staff is requesting the bidding requirements be waived for this project.

Alignment to Strategic Plan

Strong, Welcoming Neighborhoods

Fiscal Impact

The fiscal impact of this action is \$1,113,854. Funds sufficient to cover this expenditure were included in the FY 2023 Budget and are available in the amounts and accounts listed below.

Fund:	Program:	Line Item:	Project:	Amount:
802 (ARPA)	0604 (PDS Housing Initiatives)	303004 (Buildings and Structures)	PL1-0006 (Pallet Home Village)	\$1,113,854

Action Requested

Authorize the waiver of the bid requirements and authorize the City Manager to execute the purchasing contract with Pallet Shelter for the shelter village project which includes the cabin units, installation, and delivery.

Attachments

[Pallet PBC Lawrence KS Agreement](#)

**MASTER PRODUCT AND SERVICES AGREEMENT
STATEMENT OF WORK A-1**

PROJECT	Site Address – Lawrence, KS	EFFECTIVE DATE: Date Both Parties Have Signed		
	CUSTOMER: City of Lawrence, Kansas, a municipal corporation	PALLET PBC (“PALLET”)		
Contact Name	Danelle Walters			
Mailing Address	6 E. 6th St., Lawrence, KS 66044	1930 Merrill Creek Pkwy, Suite A Everett, WA 98203.		
Email Address	Dwalters@lawrenceks.org			
Telephone		425-595-4544		
UBI/Business License No.		603 622 031		
Federal Tax I.D.		8 2 - 1 5 1 6 7 2 2		
Product Purchase and Sale:				
Quantity and Type of Products Purchased:	Shelter 64 SQF 1.5" Insulated	\$9,995.00	75.00	\$749,625.00
	120v Electrical Kit w/ 1500w Heater	\$1,299.00	75.00	\$97,425.00
	Shelter 100 SQF - 1.5" Insulated	\$11,995.00	3.00	\$35,985.00
	240v Electrical Kit with 4,500w Heater	\$1,499.00	3.00	\$4,497.00
	Air Conditioner and Install Kit - Shelter 64	\$399.00	75.00	\$29,925.00
	Air Conditioner and Install Kit - Shelter 100	\$499.00	3.00	\$1,497.00
	Folding Bunk Bed	\$349.00	100.00	\$34,900.00
	Custom Fit Mattress Pad	\$299.00	100.00	\$29,900.00
Purchase Price for Products:	Total Purchase Price: \$983,754.00			
Customer Designated Shipping Date:	No later than 7/15/2023			
Description of Services:	Pallet shall perform the following Services for the Project: Manufacturing Shelters and Shipping and onsite assembly of Shelters and accessories at Customer’s Project Site.			
Price for Services	Shipping: \$56,000.00 Assembly: \$74,100.00			
Tax:	N/A contingent on receipt of tax exemption certificate			
Total Cost:	\$1,113,854.00			
Payment Terms:	50% total contract cost upon signing, remaining product and shipping cost upon shipping, and remaining cost for onsite assembly services upon completion of those services. Customer shall pay the Purchase Price via wire transfer in accordance with the instructions contained in Pallet’s invoice.			

Terms and Conditions:	This Statement of Work is subject to the Terms and Conditions attached to Statement of Work A-1 executed by the parties, which are incorporated herein by reference. Any and all documents, notes, memoranda or attachments made pursuant hereto are incorporated herein and made a part of this Statement of Work.
------------------------------	---

PALLET

PALLET PBC

a Delaware Public Benefit Corporation

By: _____
Amy King, President

Date: _____

CUSTOMER

City of Lawrence, Kansas

a Municipal Corporation

By: _____
Craig S. Owens, City Manager

Date: _____

**MASTER PRODUCT AND SERVICES AGREEMENT
TERMS AND CONDITIONS**

1. Terms and Conditions; Change Order.

(a) Terms and Conditions. As of the Effective Date set forth in an applicable Statement of Work (the “**SOW**”), of which these Terms and Conditions are attached and incorporated into by reference (these “**Terms**”), Pallet hereby agrees to: (i) manufacture and sell to Customer temporary emergency shelters commonly known as “Pallet Shelters™”(the “**Shelters**”) and supply related products, items and accessories (collectively with the Shelters, the “**Products**”) in accordance with the applicable SOW; and (ii) provide certain specialized installation and assembly services of the Products through its representatives or Subcontractors to and for the benefit of Customer (the “**Services**”), each as set forth in the applicable SOW for the project site described in the SOW (the “**Project Site**”), and Customer shall purchase the Products and Services in accordance with these Terms. For each SOW executed between Customer and Pallet, such SOW shall: (i) be numbered consecutively (e.g., A-1, A-2, A-3, etc.); (ii) expressly state that it is subject to the terms and conditions of these Terms; and (iii) be signed by both parties. As consideration for Products delivered and Services to be rendered by Pallet under these Terms, Customer shall pay to Pallet the “Purchase Price” for the Products and all “Fees” for the Services.

(b) Change Order. Subject to the terms and conditions of these Terms and the SOW, changes to any SOW can only be made by mutual written agreement of the Customer and Pallet (each, a “**Change Order**”). Any changes in the scope, timeframe, or any request for additional Services or Products that are not agreed to in the initial SOW may increase any estimated timeline for delivery of the Services or Products in such SOW. If Customer requests a Change Order, Pallet, in its sole and exclusive discretion, will determine whether it can comply with the requested changes and whether such changes would cause an increase in the price, Fees, and costs associated with the Services or Products, the time required to complete the Services or deliver the Products, or the effect on the performance of any part of the SOW. Descriptions and prices for Pallet’s Products and Services are subject to change at any time and from time to time, in its sole and exclusive discretion, without notice.

2. Purchase Price; Fees. Payment of the purchase price for the Products (the “**Purchase Price**”), and the fees, costs and expenses for Pallet’s Services (collectively, the “**Fees**”) will be made in accordance with the applicable SOW. Pallet shall invoice the Customer for its Products delivered and Services performed on a periodic basis as set forth in the applicable SOW. Unless otherwise stated herein or in an applicable SOW, Customer shall pay all amounts invoiced from Pallet to Customer within thirty (30) days of the Customer’s receipt of the invoice. Customer shall promptly pay to Pallet any and all Fees and prepaid expenses reasonably incurred by Pallet in connection with the performance of the Services, including, without limitation, transportation, tickets, travel change fees, hotel costs, or any other purchases (the “**Prepaid Expenses**”) in accordance with the applicable SOW. Pallet may, in its sole and exclusive discretion, charge a Customer interest on any overdue invoice amounts at the rate of 1.5% per month (or the highest rate permitted by applicable law) and may terminate, and/or suspend its Services for amounts remaining unpaid for greater than thirty (30) days from the date payment is due.

3. Term; Termination. The term of these Terms shall extend from the Effective Date through the completion of all Services as set forth in the applicable SOW (the “**Term**”), subject to the following termination provisions. Pallet may terminate any SOW and these Terms, in whole or in part, for “Cause” upon not less than ten (10) days prior written notice to Customer. For purposes of these Terms, “Cause” includes, but is not limited to, any of the following: (a) a material breach of these Terms or any SOW by Customer, including, without limitation, any non-payment of the Purchase Price, or any Fees when due; (b) any violation by Customer of any applicable federal, state and local laws, rules, orders, codes and regulations (collectively, “**Laws**”); or (c) if Customer is voluntarily or involuntarily dissolved, or is adjudged to be Bankrupt or is subject to a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Customer’s insolvency. For the purpose of this Section, “Bankrupt” shall mean the filing of a voluntary or involuntary petition of bankruptcy or similar relief from creditors, insolvency, the appointment of a trustee or receiver, or any similar occurrence reasonably indicating an imminent inability to perform substantially all of the Customer’s duties under these Terms or any SOW. Upon any early termination of these Terms or otherwise, Pallet shall submit to Customer a detailed invoice of any Purchase Price

remaining unpaid, and all Fees incurred to date, and Customer shall promptly pay the unpaid balance of the Purchase Price and all Fees within ten days of receipt.

4. **Products; Shipment of Products.**

(a) Purchase of Products. As consideration for the sale of the Products, the Customer shall pay to Pallet the total Purchase Price as set forth on the SOW. The Purchase Price is exclusive of any sales, use or privilege tax, personal property taxes, excise tax or any similar tax or charge that might be levied as a result of the production, sale or shipment of any Products, the use of the Products by Customer or the provision of Services (the “**Taxes**”). Customer agrees to pay and shall be solely responsible for any and all such Taxes (excluding taxes based on Pallet’s net income). Pallet shall have the option, but not the obligation, to pay any such Taxes directly, in which event Customer shall promptly reimburse Pallet in the amount thereof upon presentation by Pallet to Customer of evidence of payment.

(b) Shipment of Products. Pallet will use its commercially reasonable efforts to deliver the Products to the Customer at the Project Site on the date of delivery as set forth in the SOW. Notwithstanding the foregoing, Pallet will notify the Customer of any delays that may affect the estimated delivery date of the Products. If Pallet notifies Customer in accordance with these Terms, Pallet shall be afforded at least ten (10) additional days to deliver the Products. Unless otherwise set forth in an SOW, Pallet shall be responsible for arranging for and coordinating the shipment of the Products to the Customer. Shipping dates, if any, set forth in the applicable SOW are approximate only and merely represent Pallet's best estimate of the time required to make shipment of the Products.

(c) Delivery; Risk of Loss. Delivery of the Products to Customer will be F.O.B. Pallet’s factory, as set forth in the SOW. All Products will be prefabricated at Pallet’s factory headquarters and shipped flat-packed in individual panels to the designated Project Site. Pallet will not “drop ship” to any other location other than Project Site. Unless otherwise instructed in writing by Customer, Pallet will have the sole and exclusive right to select the carrier for the shipment and delivery of the Products. Title and risk of loss to the Products purchased under these Terms shall pass to Customer upon delivery thereof to the carrier. Pallet shall not be liable for any loss or expense incurred by Customer as a result of any delay in delivery for any reason other than arbitrary refusal of Pallet to perform. Pallet may deliver the Products in installments.

(d) Delay of Product Delivery. If any shipment or delivery of Products to the Customer is delayed at Customer's request or due to the Customer’s inability to take possession of the Products (for any reason other than Pallet’s arbitrary decision not to perform), risk of loss to such Products shall pass to Customer on the date Pallet is prepared to ship the Products to the Customer. In addition to the foregoing, Pallet shall have the right, in its sole and exclusive discretion, to: (i) invoice the Customer for the Purchase Price of such Products, and such invoice shall be due upon receipt; (ii) unilaterally increase the Purchase Price and Fees due from Customer to Pallet due to any changes or increases in the same since the execution of the initial SOW, and Customer shall be responsible and liable to pay such increase; (iii) store the Products at a location acceptable to Pallet, and charge the Customer all costs and expenses associated with such storage and with transport to such storage site, F.O.B. Pallet’s factory, which Customer shall promptly reimburse to Pallet upon receipt of an invoice for the same; and/or (iv) require the Customer to arrange for and cover all costs and expenses related to the shipment of the Products from the applicable storage location to the Project Site, all transport F.O.B. Pallet’s factory.

(e) Inspection; No Refunds. Upon delivery of the Products, Customer shall promptly inspect all Products. Unless a written claim from Customer to Pallet rejecting one or more Products (a “**Rejection Notice**”) is made and delivered to Pallet within seven (7) days from the date of delivery of the Products, the Customer agrees that it shall have knowingly, irrevocably and unconditionally accepted all Products as-delivered, as-is and with all faults and defects, subject to Customer’s rights under the Limited Warranty. Such Rejection Notice must specify in detail: (i) the total amount of Products that the Customer is rejecting; (ii) the specific details of the reason for rejection, including specific defective parts and pictures, videos, and reports of the alleged defect in the Products; and (iii) whether the alleged defects breach any express warranty of Pallet. Pallet must be provided a reasonable opportunity to inspect, examine and investigate the alleged defective Products and an opportunity to cure. Pallet may also require the Customer to send back the alleged defective Product before it determines whether any

replacement Product or repair service will be provided. In the case of any Products manufactured or supplied by any other person, entity or business (“**Third-Party Products**”) covered by the warranty of another supplier or manufacturer, Pallet will submit the existing supplier’s or manufacturer’s warranty to the Customer to the extent reasonably possible, but shall have no liability or responsibility to repair or replace such Third-Party Product. As promptly as possible after receipt by Pallet of the Rejection Notice, Pallet shall report its findings of its investigation of the alleged Defect to the Customer. Provided Pallet determines the alleged defect is covered by Pallet’s Warranty, Pallet shall notify Customer of its election to repair or replace said properly rejected Products and shall prepay transportation charges for any shipment of replacement Products back to Customer; provided, however, no refunds shall be given for any defective Products unless otherwise determined by Pallet in its sole and exclusive discretion.

5. **Limited Warranty of Pallet.** Seller agrees to warrant select Products in accordance with the terms of its standard limited warranty (the “**Limited Warranty**”), as modified by Pallet from time-to-time in Pallet's sole and exclusive discretion. Pallet’s current form of Limited Warranty can be found here: www.palletshelter.com/warranty. In the event the Products that are warranted under the terms of the Limited Warranty fail to comply with Pallet’s Limited Warranty and Customer timely reports such failure in accordance with these Terms, Pallet's sole obligation to Customer shall be limited to the repair or replacement, at Pallet’s sole and exclusive option, in accordance with the Limited Warranty. Customer acknowledges and agrees that this Limited Warranty extends only to Customer, and does not extend to any subsequent owner, transferee, assignee or user/resident of the Products; provided, however, this Limited Warranty may be assigned to a subsequent owner, transferee or assignee of the Products, subject to Customer’s compliance with Section 12(c), below.

6. **Customer’s Duties.**

(a) Customer shall fully cooperate with Pallet in its delivery of the Products and performance of the Services, and provide to Pallet true, complete and correct copies of all reasonably requested documentation or information reasonably necessary, desirable or required by Pallet in connection with the delivery of the Products and performance of the Services. Customer shall cooperate in good faith with Pallet to provide Pallet with reasonable access to any Customer facilities, officers, directors, employees, contractors, officials, or affiliates as reasonably necessary or desired by Pallet in connection with the performance of the Services. Customer represents and warrants that all documents, disclosures, information and other materials provided by the Customer to Pallet in connection with the Services, including, without limitation, all third-party documents, disclosures, and/or information, are true, complete, correct, non-infringing and not materially misleading in any way. Customer represents and warrants that the individual executing the SOW on its behalf has all necessary, legal and requisite power and authority to execute, deliver the SOW and perform these Terms on behalf of the Customer, and all other agreements and instruments to be executed and delivered in connection with these Terms.

(b) While Pallet will provide the Products and Services set forth herein, Customer shall be solely and exclusively responsible and liable for: (i) ensuring that all transactions, documents and operations in connection with these Terms, including, without limitation, all operations at the Project Site, are in compliance with all applicable Laws; (ii) procuring and maintaining all applicable permits, certifications, licenses and approvals necessary under all applicable Laws for the delivery and use of all Products and performance of all Services, including but not limited to, consultation with, inspections, and approvals from local building officials and fire authorities regarding site layout and shelter spacing; (iii) cleaning and maintaining the Products, including, without limitation, by following all user manuals, cleaning instructions and Product manuals provided by Pallet to Customer; (iv) ensuring the safety of the Products (including, without limitation, protecting, monitoring and maintaining all fire extinguishers, smoke detectors, electrical panels, keys, door locks, door handles and entrances to the Shelters), the Product’s end users and residents and the Project Site after the completion of the applicable Services; and (v) to the extent Customer uses its own Representatives to perform any assembly or installation of any Products, the acts, errors, omissions, negligence or misconduct of Customer and its Representatives in connection herewith.

(c) Pallet will assemble the Products into shelters; however, it shall have no responsibility for any Services not expressly set forth herein, including site grading, shelter leveling, electrical or plumbing connections, or staking units to the ground. Customer shall have the responsibility to provide: (i) site grading or platforms with all sleeping shelter installation surfaces within 1” of level; (ii) a site map clearly indicating the location and

placement of each shelter, including the direction the shelter should be facing; (iii) a telehandler forklift with lifting capacity of at least 6,000 pounds and 6-foot forks for 64SQFT structures and 8 foot forks for 100SQFT, 400SQFT and 800SQFT structures; (iv) a secure worksite with onsite security for the duration of the assembly and appropriate warnings for any non-obvious dangers, e.g., unmarked open trenches; (v) access to an appropriate dumpster for refuse; (vi) access to an onsite bathroom compliant with OSHA; (vii) Customer shall provide licensed contractors to perform electrical and plumbing hook-ups; and, (viii) for purchase of hygiene or laundry units, Customer shall be responsible to unload these units from the delivery trucks, to install toilets, sinks, heater/ac in hygiene units, and to procure and install washer/dryers in the laundry units. Further, Customer shall communicate to Pallet a date upon which its site is prepared and ready for shelter assembly (“Assembly Date”). Customer acknowledges and agrees that Pallet will incur expenses and allocate resources in reliance on and in preparation for the Assembly Date that Customer provides. Customer shall not change the Assembly Date with less than 14 days’ notice to Pallet. In the event Customer cancels or postpones the Assembly Date with less than 14 days’ notice, Customer shall be responsible for any fees, penalties, or other non-refundable charges, plus an administrative surcharge equal to 10% of the assembly fees to compensate Pallet for the misallocation of resources and for opportunities lost in reliance on Customer’s Assembly Date. Any failure by Customer to perform any of sub-parts (i) – (vii) prior to Pallet’s arrival to assemble shelters may result in a Change Order reflecting lost time for the period of delay at a rate of \$85 per hour per Pallet employee on site, if it is commercially reasonable for Pallet to wait for the site to be adequately prepared, or, if it is not commercially reasonable for Pallet to wait for the site to be adequately prepared, Customer shall pay the costs associated with return travel for Pallet employees. At the conclusion of the project, Customer shall make available on site a duly authorized representative to participate in a walk through and inspection of the assembled units and sign off on a document denoting satisfactory completion or identifying items to be completed prior to satisfactory completion. Customer acknowledges and agrees that any failure to provide an authorized party to participate in the final walk through and inspection may render Pallet’s warranty null and void, at Pallet’s sole and absolute discretion, and shall waive any future right to claim any defect in the work performed or goods provided.

(d) Customer acknowledges and agrees that it has received and reviewed Pallet’s Village Dignity Standards in the form attached hereto as Exhibit 1 (the “**Dignity Standards**”). Customer agrees that it shall use its reasonable best efforts acting in good faith to comply with, and cause its employees, agents, contractors, volunteers, Project Site managers and service providers (collectively, “**Representatives**”) to comply with, the Dignity Standards for the Project Site and in connection with its use, maintenance and safety of the Products. Customer shall be primarily responsible and liable for any of its Representatives’ adherence to the Dignity Standards in accordance with the terms herein. Customer represents and warrants that it has sufficient resources to comply with and adhere to the Dignity Standards and shall maintain sufficient resources at all times while it owns or licenses the Products to comply with the Dignity Standards. Customer acknowledges that its duties and obligations within this Section 6(d) are a material inducement for Pallet to enter into these Terms and for Pallet to execute the SOW, and that any failure by Customer or its Representatives to adhere to the provisions in this Section 6(d) shall constitute a material breach of these Terms. In the event of a material breach of this Section 6(c), and Pallet’s receipt of notice or knowledge of the same, Pallet may send written notice to Customer detailing the terms of the material breach and the actions that Pallet requires Customer to take in order to cure such material breach. Customer shall take such corrective actions as proscribed by Pallet within ten (10) days of its receipt of Pallet’s notice to cure. If Customer fails to take corrective action to Pallet’s reasonable satisfaction, Customer acknowledges and agrees that Pallet shall have all rights and remedies under these Terms, and at law and in equity. The terms and conditions of this Section 6 shall survive the delivery of the Products or any earlier termination or expiration of these Terms or any SOW. Customer acknowledges and agrees that Pallet shall not be liable for any failure by Customer to comply with the Dignity Standards in whole or in part.

(e) Customer hereby agrees to: (i) utilize its reasonable best efforts in performing and fulfilling its obligations hereunder; (ii) treat all end users or residents of the Products equitably, with respect, and shall not discriminate unlawfully among them in any manner; (iii) ensure that all Products reach applicable Representatives with any literature, warranties, standards/guidelines (including Dignity Standards), disclaimers and applicable licenses provided by Pallet intact; and (iv) conduct its business in a manner that will reflect favorably on Pallet and its image, credibility, good name, goodwill and reputation. Customer recognizes the great and material value of the goodwill associated with the Pallet trademarks, service marks, logos and brands (collectively, the “**Pallet Marks**”)

associated with the Products, and acknowledges that such goodwill belongs and inures solely to Pallet and that such Pallet Marks have secondary meaning in the minds of the public. Customer recognizes that the nature of the business of Pallet requires public respect for and trust in the reputation and integrity of Pallet and its Products.

7. **Subcontractors.** Subject to the terms and conditions of these Terms, Customer hereby grants to Pallet the right to assign its rights, duties or obligations under these Terms to its partners, joint venturers, contractors, agents and subcontractors (collectively, “**Subcontractors**”) with respect to the performance of Services only, on a per Project basis, subject to the limitation set forth in these Terms and any SOW. In the event of the termination or expiration of these Terms, all subcontract rights will terminate effective as of the termination or expiration of these Terms.

8. **Relationship of the Parties; Independent Contractor.** These Terms are intended to create an independent contractor relationship between the Parties. Nothing contained herein shall be construed to: (i) give either Party the power to direct or control the day-to-day activities of the other; (ii) constitute the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever, including, without limitation, representations, contractual obligations, or obligations based on warranties or guarantees. Pallet shall have and retain sole and exclusive control over the time, place and manner in which it performs the Services.

9. **Indemnification; Indemnification Procedure.**

(a) **Indemnification.** Each Party shall indemnify, defend, and hold the other Party, and its officers, directors, owners, employees, affiliates, subsidiaries, Subcontractors, successors and assigns (collectively, the “**Indemnified Parties**”) harmless from and against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder (collectively, “**Losses**”) arising out of or resulting from any third party claim, suit, investigation, action, or other proceeding (each, an “**Action**”) arising out of or resulting from a negligent act or omission by the Indemnifying Party or its representatives.

(b) **Indemnification Procedure.** The Party seeking indemnification (the “**Indemnified Party**”) shall promptly notify the other Party (the “**Indemnifying Party**”) in writing of any Action and cooperate with the Indemnified Party at the Indemnifying Party’s sole cost and expense. The Indemnifying Party shall immediately take control of the defense and investigation of the Action and shall employ counsel reasonably acceptable to the Indemnified Party to handle and defend the Action, at the Indemnifying Party’s sole cost and expense. The Indemnifying Party shall not settle any Action in a manner that adversely affects the rights of the Indemnified Party without the Indemnified Party’s prior written consent, which consent may not be unreasonably withheld or delayed. The Indemnified Party’s failure to perform any obligations under this Section 9(b) will not relieve the Indemnifying Party of its obligation under this Section except to the extent the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of the failure. The Indemnified Party may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

10. **Insurance.** During the Term, Pallet shall use commercially reasonable efforts to obtain and maintain in effect one or more policies of insurance with reputable insurance companies with respect to its Services and business against loss or damage of the kinds customarily insured against by business or entities engaged in the same or substantially similar business, of such types and in such amounts (after giving effect to any self-insurance customary for similarly situated entities engaged in the same or similar businesses as Pallet) as are customarily carried under similar circumstances by such other businesses or entities. Pallet shall provide copies of certificates evidencing each such policy of insurance applicable to the Services provided by Pallet to Customer upon request.

11. **No Warranties; Limitation of Liability; Assumption of Risk.**

(a) **No Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN PALLET’S LIMITED MANUFACTURER’S WARRANTY, PALLET HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, STATUTORY, INCLUDING: (I) ANY WARRANTIES REGARDING ANY PRODUCT OR ANY SERVICES PROVIDED BY PALLET; (II) ALL

IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT; AND (III) ANY WARRANTIES REGARDING ANY PRODUCT'S COMPLIANCE WITH ANY APPLICABLE LAWS, INCLUDING ANY APPLICABLE BUILDING CODES. PALLET WILL HAVE NO LIABILITY TO CUSTOMER OR ANY OTHER PERSON FOR OR ON ACCOUNT OF ANY INJURY, DAMAGE, OR ANY OTHER LIABILITY, ARISING OUT OF ANY INJURY CAUSED TO ANY PERSON OR PROPERTY BY CUSTOMER OR ANY CUSTOMER PARTY. NO EMPLOYEE, SUBCONTRACTOR OR REPRESENTATIVE OF PALLET IS AUTHORIZED TO MODIFY ANY PALLET WARRANTY WITHOUT THE EXPRESS WRITTEN CONSENT OF PALLET'S PRESIDENT.

(b) Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, PALLET WILL NOT BE LIABLE TO CUSTOMER OR ANY CUSTOMER PARTY FOR ANY CONSEQUENTIAL OR ENHANCED DAMAGES, ARISING OUT ANY LEGAL CLAIM. IN NO EVENT SHALL PALLET'S AGGREGATE LIABILITY EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER UNDER THE APPLICABLE SOW (WHICHEVER IS LESS) IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

(c) Assumption of Risk; Waiver and Release. Subject to the terms and conditions of the applicable SOW, should Customer choose to use its own services to assemble and/or install some or all of the Products, including, without limitation, the applicable Shelters manufactured by Pallet, then Customer hereby knowingly and voluntarily acknowledges and agrees that its election to assemble and/or install its own Products involves serious risks, including, without limitation, and by way of example only: dangers encountered when assembling or installing the Products, risks arising out of failing to wear proper safety equipment, failure to follow and adhere to applicable installation or assembly instructions, risks associated with the applicable Project, property loss or damage, bodily injury, paralysis, death, theft, as well as the conduct, actions, inactions or omissions of any third parties. Where Customer chooses to use its own services to assemble and/or install some or all of the Products, then, acknowledging the above, CUSTOMER HEREBY VOLUNTARILY ACKNOWLEDGES AND ASSUMES ALL RISKS BOTH KNOWN AND UNKNOWN TO CUSTOMER AND ANY CUSTOMER PARTY, RELATING IN ANY WAY TO CUSTOMER'S OR ANY CUSTOMER PARTY'S KNOWING AND VOLUNTARY ASSEMBLY OR INSTALLATION OF THE PRODUCTS. Where Customer chooses to use its own services to assemble and/or install some or all of the Products, then, to the maximum extent permitted by applicable law, Customer HEREBY FOREVER, KNOWINGLY AND IRREVOCABLY WAIVES, RELEASES, DISCHARGES, AND RELINQUISHES any and all rights, claims, liability, losses, costs, damages, or causes of action of any and every kind whatsoever which Customer may have, had or could have against Pallet or any Pallet Party arising out of, or related in any way, directly or indirectly, to Customer's assembly or installation of the Products, or any negligent conduct, actions, inactions or omissions of any Pallet Party related thereto (collectively, the "Released Claims"). Such Released Claims include, but are not limited to, any and all injury, loss, death, bodily harm or other damages to Customer or any Customer Party.

12. **Miscellaneous.**

(a) Entire Agreement; Conflicts. These Terms and the applicable SOWs, collectively represent the full, final and comprehensive agreement and understanding of the Parties and any modification thereof shall not be effective unless contained in writing and signed by both Parties. Any prior or contemporaneous agreements, whether oral or written, relating to the subject matter discussed herein have been merged into these Terms. In the event of any conflict between the terms and provisions of these Terms and those of any SOW or other document, the following order of precedence will govern: (i) the most recent Change Order shall control over any other Change Order, SOW or these Terms; and (ii) the most recent SOW shall control over any prior SOW or these Terms.

(b) Severability. Each provision of these Terms shall be considered severable such that if any one provision or clause conflicts with existing or future applicable law, or may not be given full effect because of such law, this shall not affect any other provision of these Terms that can be given effect without the conflicting provision of clause; provided however, that such provision shall be modified, to the minimum extent possible and necessary, to be enforceable to the fullest extent and in compliance with any such applicable laws, prior to it being severed from these Terms in its entirety.

(c) Assignment; Third-Party Beneficiaries. Customer may assign an applicable SOW and these Terms (and the Limited Warranty associated herewith) to a subsequent owner, transferee or assignee of the Products herein, provided that the Customer: (i) provides prior written notice of the proposed assignment to Pallet; and (ii) receives the prior written consent of Pallet to the proposed assignment, which may be withheld in Pallet's sole and exclusive discretion. As a condition to Pallet's approval, if given, any potential assignee otherwise approved by Pallet shall assume all obligations of Customer under these Terms (including the Limited Warranty) and each applicable SOW, and shall be jointly and severally liable with the initial Customer, if required by Pallet, for the payment of all Fees and performance of all obligations of Customer under these Terms and any applicable SOW. In connection with any proposed assignment, Customer shall provide Pallet with copies of all assignment and assumption instruments, and any other documentation reasonably requested by Pallet. Any attempted assignment of these Terms or any SOW that does not comply with this Section 12(c) shall be null, void and of no force or effect whatsoever. These Terms are for the sole benefit of the Parties and their respective successors and permitted Assigns and nothing herein, express or implied, including specifically the duties and obligations set forth in Section 6(c), is intended to or will confer upon any other person, governmental entity, business or entity, any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of these Terms.

(d) Governing Law; Venue.

(i) Governing Law; Venue. Subject to Section 12(d)(ii), below, these Terms, any SOW and any Change Order shall be governed by and construed in accordance with the domestic laws of the state of Kansas without giving effect to any choice of law or conflict of laws provision or rule (whether of the state of Kansas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of Kansas. The Parties hereto agree that the exclusive jurisdiction and venue for any action brought between the Parties under these Terms shall be the Superior Court for Douglas County, Kansas, or the federal courts residing in the District of Kansas, and each of the Parties hereby agrees and submits itself to the exclusive jurisdiction and venue of such courts for such purpose. In the event of any litigation between the Parties hereto arising out of these Terms, the prevailing Party shall be allowed all reasonable attorneys' fees, court costs and expenses incurred in such litigation, including all such expenses incurred on appeal, together with all reasonable costs and disbursements necessary to enforce these Terms.

(e) Survival. The provisions of Sections 2, 3, 4(d), 5, 6, 8, 9, 11 and 12 shall survive the termination or expiration of these Terms.

(f) Notices. Any notice required or permitted by these Terms shall be in writing and delivered in person, sent by documented overnight delivery service, mailed by certified or registered mail, postage prepaid, or sent via email to the appropriate designated address of the intended recipient, transmission verification required, to the appropriate Party or Parties at the addresses referenced in the applicable SOW, or to such other address as the Parties may hereafter designate to the other in writing.

(g) Force Majeure. A Party (referred to in this Section as a "**Force Majeure Party**") shall be excused from the performance of its applicable obligation(s) under these Terms (other than the payment of any monies owed to the other Party, including, without limitation, any Purchase Price or Fees) to the extent that such performance is made commercially impracticable, illegal, or impossible by an event of Force Majeure that is beyond the Force Majeure Party's reasonable control, and the Force Majeure Party provides written notice of the prevention within ten (10) business days of the occurrence of the Force Majeure event to the other Party (including details of the Force Majeure event, its anticipated duration and any action being taken to avoid or minimize its effect) and uses commercially reasonable efforts to avoid the effects of such Force Majeure and to perform the affected obligation(s) to the extent reasonably possible. Such excuse of performance shall be continued for so long as the condition constituting Force Majeure continues and the Force Majeure Party takes reasonable efforts to remove the condition or otherwise perform the affected obligation(s). For purposes of these Terms, "**Force Majeure**" shall mean only acts of God, strikes, civil disturbances, fires, earthquakes, governmental order or proclamation, outbreak or pandemic, supply chain interruption (to the extent such interruption is not caused by the gross negligence of such Party), acts of terrorism, floods, explosions, riots, war, rebellion, sabotage or failure or default of public utilities or common carriers. For clarity, notwithstanding the existence of a Force Majeure impacting a Party's performance hereunder, such Force Majeure Party shall continue to perform all of its other obligations hereunder, and the other

Party shall be excused from performing such of its obligations under these Terms that it cannot reasonably perform due to the non-performance by the Force Majeure Party due to such Force Majeure, until such Force Majeure Party completes performance of such obligations that are prevented by such Force Majeure.

(h) No Public Statements. Except as required by applicable law, neither Party may issue or release any announcement, statement, press release, or other publicity or marketing materials relating to these Terms or, unless expressly permitted under these Terms, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which may not be unreasonably withheld, conditioned or delayed.

(i) Construction. The Parties hereby reaffirm that each has read the foregoing Terms and that each Party has had the opportunity to review, negotiate and participate in the creation of these Terms through independent counsel. The provisions contained herein shall not be construed or interpreted for or against any Party hereto because that Party drafted or caused that Party's legal representative to draft any of its provisions.

(j) Kansas Cash-Basis Law of 1933. This Agreement must comply with the applicable provisions of the Kansas Cash-Basis Law of 1933, codified as amended at K.S.A. 10-1101 et seq. The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes set forth in this Agreement during the City's current budget year. In the event that the City does not so budget and appropriate funds, the parties acknowledge and agree that they shall be relieved of all obligations under this Agreement without penalty. To the extent that the City does so budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein. For the avoidance of confusion and notwithstanding anything to the contrary in the foregoing, the Parties agree and acknowledge that City will secure budgeting and full appropriation for the funds required by this Agreement in this budget year and will ensure that all payments required by this Agreement are paid in full during this budget year.

Exhibit 1

PALLET VILLAGE DIGNITY STANDARDS

INHERENT & ABSOLUTE

Pallet's mission is to end unsheltered homelessness. Pallet villages are operated by community partners who collaborate with village residents to end their unhoused status, while transitioning into stable housing as quickly as possible. Villages provide life-sustaining services in a manner that fosters a safe, affirming, and dignified atmosphere for all residents. Discrimination or disparate treatment toward village residents on the basis of race, religion, national origin, immigration status, gender or non-gender conforming, sexual orientation, or any other protected class is strictly prohibited.

At Pallet, we believe in all people's inherent and absolute dignity. Guided by feedback from village operators and Pallet team members with lived-experience, we have created a set of dignity standards intended as universal and irreducible requirements for the purchase and use of Pallet shelters. These are organic principles intended to evolve and refine as we learn more about what works best.

HYGIENE FACILITIES

Everyone is entitled to hygiene and sanitation that is clean, safe, secure, and that provides privacy and ensures dignity. Well-maintained toilets are mandatory at all Villages and must be available at all times. Flush toilets are strongly preferred, especially as the number of residents increases. Well-maintained hand-washing facilities are mandatory and must be available at all times. Residents must have access to showers. Showers on site are preferred. An alternative shower plan is acceptable assuming reasonable distance and safety. Residents must be able to wash their clothes as needed. Laundry on site is preferred. An alternative laundry plan is acceptable assuming reasonable distance and safety.

MEALS

All people should live free of hunger, food insecurity, and malnutrition and Villages are required to confront and solve for these issues. Clean, safe drinking water must be available to all residents at all times. The provision of two-to-three nutritious meals daily and a place to prepare meals is strongly preferred. Operators should ensure that all areas used for food storage or preparation are kept sanitary and comply with local health codes. When needed, residents should be aided in signing up for food-based government benefits upon moving in.

TRANSPORTATION

Access to essential services is a basic human right. Villages must not be more than one mile from an active public transportation hub allowing access to essential services such as food, healthcare, public benefits, and employment. Where not possible, shuttle services or other alternative transportation must be provided.

Accommodations should be made for disabled persons who are unable to access general means of transportation.



SAFETY

We all want to feel safe in our neighborhoods. Residents, staff, and the surrounding communities should be afforded every available measure of safety and security. Site infrastructure must include exterior fencing, locking gate/monitored entrances, and operable lighting. Cabin spacing must be approved by the local fire authority, addressing the risk of fire and its potential to spread. Village operators must maintain and ensure clear pathways between and in each cabin. Operators must enforce a strict policy against smoking or open flames inside cabins. Operators must have sufficient staff on duty at all times and enforce established safety measures. Staff with de-escalation and trauma-informed training is strongly preferred. A zero-tolerance policy toward violence, abuse of power, threats/intimidation, sexual harassment/assault, or discrimination of any kind is mandatory for all persons at the village.

SUPPORTIVE SERVICES

The primary function of villages is to provide a supportive, safe community for residents to access services needed to permanently end their unhoused status. Village operators must engage residents in supportive services/case management. Supportive services must be client-centric with an emphasis on attaining stable housing, publicly available benefits, holistic health care, vital documents, and employment. Case management should be frequent, consistent, and transparent. It must be offered by trained staff.