

STATE OF TEXAS § **SUBRECIPIENT AGREEMENT**
§
§ **FOR A SUBAWARD OF STATE AND**
§
COUNTY OF BEXAR § **LOCAL FISCAL RECOVERY FUNDS**

THIS SUBRECIPIENT AGREEMENT FOR A SUBAWARD OF FEDERAL FINANCIAL ASSISTANCE THROUGH THE STATE AND LOCAL FISCAL RECOVERY FUNDS, (herein after referred to as “Agreement”) is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as “City” or "Pass-Through Entity"), a Texas municipal corporation, acting by and through its City Manager, pursuant to Ordinance No. 2022-_____ passed and approved on the ___ day of _____, 2022 and LiftFund Inc. (hereinafter referred to as “LiftFund” or “Subrecipient”), a nonprofit organization organized in the State of Texas, by and through its authorized representative, both of which may be referred to herein collectively as the “Parties”.

RECITALS

WHEREAS, on March 11, 2021, President Joe Biden signed the American Rescue Plan Act (“ARPA”), to provide an estimated \$350 billion in emergency funding directly to state and local governments to support the nation’s recovery from the health and economic impacts of the COVID-19 pandemic; and

WHEREAS, under ARPA, the City of San Antonio was allocated \$326.9 million in State and Local Fiscal Recovery Funds (“SLFRF”) and was distributed an initial amount of \$127.5 million which it used to stabilize its budget and address community needs exacerbated by the pandemic; and

WHEREAS, the City conducted a community engagement process including three public meetings hosted by the Small Business Advisory Commission (SBAC) to garner input from the small business community; and

WHEREAS, on February 3, 2022, the City Council approved a spending framework for the remaining \$199.4 million of the City’s total allocation of SLFRF funds to support the City’s response and recovery from the COVID-19 pandemic which included \$30.9 million for small business to support continued response to the COVID-19 pandemic; and

WHEREAS, in 2020, the City successfully partnered with LiftFund for its Small Business Support Strategy of the City’s COVID-19 Community Recovery and Resiliency Plan and in accordance with the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, which provided more than \$31 million in emergency grants; and in 2021 with the Hospitality Small Business Grant Program, which provided \$13.95 million in grants for the hospitality industry, with an emphasis on food & beverage small businesses; and

WHEREAS, the need for relief for small businesses continues into 2022 and the City Council of San

Antonio has determined it necessary to allocate additional funds toward a COVID Impact Grants Program (“the Program”) targeting small businesses in industries especially impacted by the adverse effects of the pandemic; and

WHEREAS, in order to begin implementation of the Program, it is necessary for the parties to enter into a Subrecipient Agreement for a subaward of State and Local Fiscal Recovery Funds whereby City has agreed to subaward \$17.0 million of SLFRF funds to Subrecipient in accordance with the terms and conditions set out in this Agreement; and

WHEREAS, pursuant to City Ordinance No. 2022-02-03-0072, the City Council authorized the expenditure of SLFRF funds in the amount further described in Article III below to support the undertaking and completion of the Program in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, the Parties hereto severally and collectively agree, and by the execution of this Subrecipient Agreement are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

- 1.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on June 23, 2022, and shall terminate upon completion of the Program or December 31, 2022; whichever occurs first (the “Term”).
- 1.2 The rights and obligations of the Parties set forth in the Attachment A - Scope of Service, attached in its entirety hereto and incorporated herein for all purposes which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

II. GENERAL RESPONSIBILITIES OF SUBRECIPIENT

- 2.1 By execution of this Agreement, Subrecipient hereby accepts full responsibility for the performance of all services and activities described in this Agreement for the purpose of carrying out a portion of a Federal award.
- 2.2 Subrecipient is authorized and shall, pursuant to the Director of Economic Development’s (“Director”) request, publicly acknowledge that the City of San Antonio is supportive of the objectives as described in Article V. Scope of Work and that the City of San Antonio has contributed to the cause of realizing such objectives.

III. SLFRF FUNDING

- 3.1 In accordance with ARPA and the Final Rule, City subawards Subrecipient an amount not to

exceed SEVENTEEN MILLION DOLLARS AND NO CENTS (\$17,000,000.00) (the “Subaward”) to undertake and complete the Program in accordance with the terms and conditions of this Agreement, described in Article V entitled Scope of Work, as further described in Attachment A. The Subrecipient acknowledges that the Subaward is federal funding, passed through the City and is made available to respond to the negative economic impacts of the COVID-19 pandemic on small businesses.

Line Item	Amount
COVID-19 Impact Grants Allocation	\$15,640,000.00
<i>LiftFund Administrative Costs</i>	<i>\$1,360,000.00</i>
Total:	\$17,000,000.00

3.2 COVID-19 Impact Grants Allocation. LiftFund shall utilize \$15,640,000.00 in funding for direct grant assistance (“Grant Assistance”), which shall be fully awarded within one hundred and twenty days (120) days of grant application closing. Funding shall be disbursed to LiftFund in one installment on August 23, 2022. Any Grant Assistance not obligated or expended within one hundred and twenty (120) days of grant application closing, that have been provided to Subrecipient as part of this Agreement, shall be returned to the City within fifteen (15) days of said time.

3.3. Administrative Costs. LiftFund shall be paid administrative costs of up to ONE MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS AND NO/CENTS (\$1,360,000.00) (or 8%) for direct and indirect costs as defined in 2 CFR 200.413 and 2 CFR 200.414, as long as they are accorded consistent treatment per 2 CFT 200.403; allowable costs that are reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405; and eligible under the Cost Principles detailed in Section 200.400 - 475 of the Uniform Guidance, Granting Agency requirements, and the terms of this Agreement. Administrative costs shall be disbursed to LiftFund in two installments as follows:

- a. SIX HUNDRED EIGHTY THOUSAND DOLLARS AND NO/CENTS (\$680,000.00) upon execution of this Agreement, provided however, that Subrecipient submits completed endorsements and Certificate(s) of Insurance as required in Article XVIII Insurance. Submission of Certificate(s) shall occur no later than ten (10) days from execution of this Agreement.
- b. SIX HUNDRED EIGHTY THOUSAND DOLLARS AND NO/CENTS (\$680,000.00) on or before December 22, 2022, upon submission of Grants Award Analysis Report to Economic Development.

3.4 The grant application will be open from August 1, 2022, at 10:00am CDT and close on August 22, 2022, at 5:00pm CDT. The application review period, grant award selection and funding will occur by December 12, 2022.

- 3.5 Prior to disbursement of funding from the City, LiftFund shall submit a detailed invoice of incurred expenses to the City. The invoice should indicate if the funds are related to funds for Grant Assistance awards pursuant to 3.2 above, or for Administrative Costs pursuant to 3.3 above. The City may withhold Subaward amount disbursements from the Subrecipient if the Department Director reasonably believes that the Subrecipient (1) has not complied with all obligations under this Agreement, the SLFRF Funding Requirements, and/or Granting Agency Requirements, (2) the Subrecipient has breached any representations and warranties under this Agreement, (3) the submitted expenditures are not in accordance to the approved Program Budget as provided in this Agreement, (4) the expenses are not considered Allowable Expenses, (5) the expenses have not been incurred, and/or (6) the proof of expenses provided by the Subrecipient are not adequate to confirm that the expenditure meets the requirements of this Agreement. Subrecipient acknowledges and agrees that the City will not make a reimbursement to the Subrecipient for expenses that are or will be reimbursed by another funding source, including but not limited to another federal, state, or local government agency.
- 3.6 Subrecipient shall submit invoices to City, in a form acceptable to City, which City shall process upon receipt and approval by Director. Original invoices shall be submitted electronically directly to the City of San Antonio, Accounts Payable section of the Finance Department to the following e-mail address: accounts.payable@sanantonio.gov.
- Subrecipient shall submit a copy of the invoice to the City of San Antonio, Economic Development Department liaison. Please include the EDD liaison, Caitlin.cowart@sanantonio.gov in the correspondence to ensure the invoice is processed.
- 3.7 In no event shall City be liable for any expense of Subrecipient not eligible, allowable, or in accordance within this Agreement. In the event the Subaward is not used for the purposes authorized under and/or in accordance with the terms and conditions of this Agreement, or found to be in violation of any provisions under this Agreement, Subrecipient agrees to refund any and all amounts to City which were not authorized or used in accordance with the terms and conditions within this Agreement within thirty (30) days of being notified by City.
- 3.8 City shall not be obligated nor liable under this Agreement to any party, other than Subrecipient, for payment of any monies or provision of any goods or services.
- 3.9 Subrecipient understands that the funds provided pursuant to this Agreement may be either City funds or Federal funds and will therefore comply with all rules, regulations, policies and procedures applicable to these funds as directed by City. No General Fund Obligation. Subrecipient understands and agrees the Subrecipient Award are federal funds allocated to City under ARPA and appropriated to Subrecipient under SLFRF. Subrecipient agrees that the City has no obligation under this Agreement to provide funding to Subrecipient out of City's General Fund.

- 3.10 Subrecipient acknowledges and agrees the award by City to Subrecipient is contingent upon the City receiving funds from the Granting Agency.

IV. SLFRF FUNDING CONDITIONS

- 4.1 In order to receive the funding provided for in Article III of this Agreement, Subrecipient must agree and/or satisfy the following conditions:
- A) The use of SLFRF Funds is solely for costs incurred that are necessary to carry out the activities listed in the Scope of Service (Attachment A) and in accordance with the Project Budget (Attachment C).
 - B) The use of Subaward is for eligible costs that are incurred between the Effective Date of this Agreement and December 31, 2022.
 - C) Subrecipient is explicitly barred from utilizing Subaward for any ineligible activities, including, but not limited to, reductions in taxes, deposits into pension funds or other reserves, debt service, replenishing financial reserves, use in satisfaction of settlements or judgments.
 - D) Subrecipient may not use SLFRF funds that conflict with or contravene the purpose of the American Rescue Plan Act (ARPA).
 - E) Any costs that are determined by subsequent audit to be unallowable are subject to repayment by the Subrecipient to the City in accordance with Article III above and 2 CFR 200.410.
 - F) If Subrecipient receives a refund or credit for any cost for which it received a payment of Subaward funds, Subrecipient shall notify City and return Subaward funds in the amount equal to the refund or credit to the City in a manner designated by the City, no later than thirty (30) days following receipt of such refund or credit.
 - G) Subrecipient will determine prior to engaging in the Program and expending Subaward funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
 - H) Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with Section 602(c) of the Social Security Act and Treasury's regulations implementing that section and guidance. Subrecipient will comply with all other applicable federal statutes, regulations, reporting requirements, and executive orders, as applicable, including those outlined in the attached Attachments
 - I) If the Subrecipient has received other ARPA or SLFRF funds from the City or any other entity, or has received other federal funds (e.g. Coronavirus Relief Act funds, a Payroll Protection Act loan, etc.), Subrecipient shall not use the Subaward funds provided for

under this Agreement to pay for direct or indirect costs already covered by the other federal funding, other ARPA funds, or SLFRF fund payments.

V. SCOPE OF WORK

- 5.1 Subrecipient will administer and carry out all activities and services in compliance with this Agreement described in Attachment A.
- 5.2 Subrecipient will utilize the grant eligibility criteria attached hereto and incorporated herein for all purposes as Attachment B – COVID Impact Grants – Eligibility Criteria & Scoring.
- 5.3 In performing the services required hereunder, Subrecipient shall:
 - 5.3.1 Process, store, and transmit all sensitive data (particularly Sensitive PII as defined in Section 521 of the Texas Business And Commerce Code) captured in the performance of this Agreement in a secure manner and with appropriate technical and procedural controls. All file transmission shall be protected using a mutually-agreed-upon transmission method, which must be proposed to and approved by City within 15 days of execution of this Agreement. At any time, the City may request that Subrecipient provide evidence of its technical and procedural controls in a timely fashion, including but not limited to security awareness training programs, encryption protocols, and cybersecurity policies and procedures.
 - 5.3.2 Ensure that any organizations or agencies that Subrecipient works with to perform the services required hereunder also adhere to and implement the technical requirements set out in this Article 5.3.

VI. CONTINUING OBLIGATIONS

- 6.1 It is the sole responsibility of Subrecipient to ensure compliance with all applicable federal, state, and local laws, rules, policies, and regulations in connection with this Agreement, applicable to SLFRF funds, and the work performed thereunder, including, without limitation the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions (**Exhibit D**). Subrecipient’s failure to comply with such laws or regulations may result in all or a portion of the SLFRF funds becoming subject to recoupment by the City. If all or any portion of the SLFRF funds of the Project become subject to recoupment, the City will notify the Subrecipient in writing and the Subrecipient shall within thirty (30) days of receiving such notice, return such SLFRF funds (including both any unexpended portion and funds equal to the portion expended) and any interest earnings thereon. In addition, Subrecipient shall be responsible for, and hereby agrees to promptly pay or reimburse the City for all costs incurred by the City, its employees, officers and agents (including without limitation, attorneys’ fees) related to or arising out of such recoupment, including without limitation costs of any related investigation, audit and/or collection efforts.

- 6.2 In the event of a conflict between the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions and other terms in this Agreement, the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions shall govern.

VII. FISCAL MANAGEMENT

- 7.1 Subrecipient shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent frauds and program abuse.
- 7.2 Administrative overhead costs may not exceed eight percent (8%) of the Subaward provided under this Agreement. Subrecipient shall provide City detailed administrative costs by line item with its Grants Award Analysis Report.
- 7.3 Subrecipient costs or earnings claimed under this Contract may not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.
- 7.4 Subrecipient shall not use funds awarded from this Contract as matching funds for any federal, state or local grant without the prior written approval of the City Manager (or designee)
- 7.5 Within ten (10) working days of City's written request therefor, Subrecipient shall refund to City any sum of money paid by City to Subrecipient later determined to:
- 7.5.1 Have resulted in overpayment to Subrecipient;
 - 7.5.2 Have not been spent by Subrecipient strictly in accordance with the terms of the Agreement; or
 - 7.5.3 Not be supported by adequate documentation to fully justify the expenditure.

This subsection includes sums for grants identified by City audit to have been awarded contrary to the selection criteria and/or ranking requirements set out in the COVID Impact Grants – Eligibility Criteria & Scoring. For these sums, City may choose, at its discretion, to request return of funds in accordance with this Section 7.5 or to deduct the amount from future disbursement, should any scheduled installments remain.

- 7.6 Subrecipient shall maintain financial stability and operate in a fiscally responsible and prudent manner. City may immediately terminate this Contract if the City finds, in its sole discretion, that Subrecipient's financial condition may impact performance under this Contract. Subrecipient represents and warrants that:
- (A) All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate as of the date shown on the information, data, or

report, and that since said date shown, shall not have undergone any significant change without written notice to City.

- (B) It is financially stable and capable of fulfilling its obligations under this Agreement and that Subrecipient shall provide City immediate written notice of any adverse material change in the financial condition of Subrecipient that may materially and adversely affect its obligations hereunder, including items that reflect detrimentally on credit worthiness of Subrecipient.
- (C) There is no litigation or proceedings presently pending or, to Subrecipient's knowledge, threatened against Subrecipient, including liens and encumbrances on assets of Subrecipient
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which Subrecipient is doing business or with the provisions of any existing indenture or agreement of Subrecipient.

7.7 Subrecipient shall obtain a federal audit where applicable per federal laws and submit the audit and Schedule of Expenditures of Federal Awards (SEFA) within 30 days of completion or 6 months of their fiscal year end, whichever is sooner.

7.8 Subrecipient shall permit Pass-Through Entity and auditors to have access to the Subrecipient's records and financial statements as necessary for the Pass-Through Entity to meet the requirements of 2 CFR 200.332 Requirements for Pass-Through Entities.

VIII. RECEIPT AND ACCOUNT OF FUNDS BY SUBRECIPIENT

8.1 Subrecipient agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Subrecipient further agrees:

8.1.1 That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement, as well as with all generally accepted accounting practices; and

8.1.2 That Subrecipient's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

8.2 Subrecipient agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement pursuant to Article XIV. Records Retention and Accessibility, below.

IX. REPORTING AND MONITORING

- 9.1 City shall have authority to inspect the Subrecipient's compliance with this Agreement throughout the Agreement term to ensure proper usage of Subaward as described by the Scope of Work. This includes, but is not limited to, an audit of an up to 15% sample of grant awards for the purpose of evaluating the accuracy of application scoring and award selection.
- 9.2 City reserves the right to evaluate Subrecipient's progress and performance in undertaking and completing the Project and to confirm Subrecipient's compliance with the terms and conditions of this Agreement. Should City create a written monitoring report of Subrecipient's performance, City shall provide Subrecipient with a copy of such report to include any findings resulting from City's evaluation. If the monitoring report notes deficiencies in Subrecipient's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by Subrecipient and a reasonable amount of time in which to attain compliance. Failure by Subrecipient to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Article XV. below.

X. CLOSEOUT

- 10.1 The Federal awarding agency or Pass-Through Entity will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or Pass-Through Entity will proceed to close out the Federal award with the information available. This section specifies the actions the non-Federal entity and Federal awarding agency or Pass-Through Entity must take to complete this process at the end of the period of performance.
- (A) Subrecipient must submit to the Pass-Through Entity, no later than ninety (90) calendar days (or an earlier date as agreed upon by the Pass-Through Entity and Subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or Pass-Through Entity may approve extensions when requested and justified by the non-Federal entity, as applicable.
- (B) Unless the Federal awarding agency or Pass-Through Entity authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
- (C) The Federal awarding agency or Pass-Through Entity must make prompt payments to the non-Federal entity for costs meeting the requirements in 2 CFR Subpart E Cost

Principles under the Federal award being closed out.

- (D) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or Pass-Through Entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see 2 CFR 200.346 for requirements regarding unreturned amounts that become delinquent debts.
- (E) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or Pass-Through Entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.
- (F) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 CFR 200.310 through 200.316 and 200.330.
- (G) When a recipient or subrecipient completes all closeout requirements, the Federal awarding agency or Pass-Through Entity must promptly complete all closeout actions for Federal awards. The Federal awarding agency must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.
- (H) If the non-Federal entity does not submit all reports in accordance with this section and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to close out with the information available within one year of the period of performance end date.
- (I) If the non-Federal entity does not submit all reports in accordance with this section within one year of the period of performance end date, the Federal awarding agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). Federal awarding agencies may also pursue other enforcement actions per 2 CFR 200.339.

XI. POST-CLOSEOUT ADJUSTMENT AND CONTINUING RESPONSIBILITIES

- 11.1 Pursuant to 2 CFR 200.345, the closeout of a Federal award does not affect any of the following:
- (1) The right of the Federal awarding agency or Pass-Through Entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or Pass-Through Entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.
 - (2) The requirement for the non-Federal entity to return any funds due as a result of later

refunds, corrections, or other transactions including final indirect cost rate adjustments.

- (3) The ability of the Federal awarding agency to make financial adjustments to a previously closed award such as resolving indirect cost payments and making final payments.
 - (4) Audit requirements in 2 CFR Subpart F.
 - (5) Property management and disposition requirements in 2 CFR 200.310 through 200.316.
 - (6) Records retention as required in 2 CFR 200.344 through 200.337.
- 11.2 After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or Pass-Through Entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in 11.1 of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

XII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

- 12.1 Subrecipient covenants and agrees that Subrecipient is an independent contractor and not an officer, agent, servant or employee of City; that Subrecipient shall have exclusive control of, and exclusive right to control, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Subrecipient, its officers, agents, employees, contractors, subcontractors and consultants; and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures or any other similar such relationship between the Parties hereto. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Subrecipient under this Agreement and that the Subrecipient has no authority to bind the City.

XIII. OWNERSHIP OF DOCUMENTS

- 13.1 Any and all writings, documents, reports or information in whatsoever form and character produced by Subrecipient pursuant to the provisions of this Agreement is the exclusive property of City without limitation; and no such writing, document, report, or information shall be the subject of any copyright or proprietary claim by Subrecipient. Subrecipient understands and acknowledges that as the exclusive owner of any and all such writings, documents, reports, and information, City has the right to use all such writings, documents, reports, and information as City desires, without restriction.

XIV. RECORDS RETENTION AND ACCESSIBILITY

- 14.1 Subrecipient and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (the “Records”). Wherever practicable, such Records should be collected, transmitted, and stored in an open and machine-readable formats, and in a manner consistent with §200.333 Retention requirements for records of 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Subrecipient acknowledges and agrees that retention of the Records by Subrecipient and City’s right to inspect the s as set forth below, are required in order to permit City’s representatives to determine with certainty Subrecipient’s compliance with all of Subrecipient’s obligations under this Agreement, including, without limitation, compliance with the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions.
- 14.2 Subrecipient shall retain any and all documents produced as a result of services provided hereunder for a period of five (5) years (hereafter referred to as “Retention Period”) from the date of termination of the Agreement, at which time documents retained by Subrecipient shall be forwarded to City. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Subrecipient shall retain the records until the resolution of such litigation or other such questions. City may, at its election, require Subrecipient to return the documents to City at Subrecipient’s expense prior to or at the conclusion of the retention period. In such event, Subrecipient may retain a copy of the documents at its sole cost and expense.
- 14.3 Subrecipient shall notify City, immediately, in the event Subrecipient receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Subrecipient understands and agrees that City will process and handle all such requests.
- 14.4 Upon at least five (5) business days’ prior notice to Subrecipient, Subrecipient shall allow designated representatives of City access to the Records at the Program site or such other location where the Records are kept during normal business hours for inspection to determine if the obligations of Subrecipient and the terms and conditions of this Agreement are being met by Subrecipient. If the Records are kept in any location outside of Bexar County, Subrecipient shall provide access to City to inspect the Records within Bexar County. Any information that is not required by law to be made public shall be kept confidential by City. Subrecipient shall not be required to disclose to City any information that by law Subrecipient is required to keep confidential.
- 14.5 Should any good faith dispute or question arise as to the validity of the data inspected, City reserves the right to require Subrecipient to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost

of Subrecipient.

- 14.6 The rights to access the Records shall continue through the Term of this Agreement.
- 14.7 Failure to provide reasonable access to the Records to authorized City representatives shall give City the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default, and to exercise City's right to recoup all disbursed funds made to Subrecipient under this Agreement.

XV. DEFAULT, SUSPENSION, AND TERMINATION

- 15.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article I. Term, or earlier termination pursuant to any of the provisions hereof.
- 15.2 Termination Without Cause. This Agreement may be terminated by City without cause upon thirty (30) calendar days' written notice, which notice shall be provided in accordance with Article XVI. Notices.
- 15.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XVI. Notices, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of the following event, which shall constitute an Event for Cause under this Agreement:
- 15.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XXI. Non-Assignment.
- 15.4 Defaults With Opportunity to Cure. Should Subrecipient fail to comply with any of the terms and/or conditions of this Agreement, then such noncompliance shall be deemed a "default. Upon the occurrence of a default, City shall provide Subrecipient with written notification as to the nature of default and, in a manner stated below, in accordance with Article XVI. Notices, that either:
- (1) requests Subrecipient suspend, in whole or in part, immediately while City investigates the default and withhold further disbursements of funds to Subrecipient. Such notice of suspension shall include: (a) the reason for such suspension; (b) the effective date of suspension; and (3) in case of partial suspension, the portion of this agreement to be suspended. A suspension under this Article may be lifted by City upon a showing by Subrecipient that the default has been cured or by a written waiver of City of the term(s) in question.

Or

- (2) City provides Subrecipient an opportunity to cure such default, whereupon Subrecipient shall have seven (7) calendar days following date of Subrecipient's receipt of City's written

notification (the “Cure Period”) to cure such default. If Subrecipient fails to cure the default within the Cure Period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Subrecipient to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new Subrecipient against Liftfund’s future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 15.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 15.6 Regardless of how this Agreement is terminated, Subrecipient shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Subrecipient, or provided to Subrecipient, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Subrecipient in accordance with Article XIV. Records Retention and Accessibility. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Subrecipient’s sole cost and expense. Payment of compensation due or to become due to Subrecipient is conditioned upon delivery of all such documents, if requested by City.
- 15.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Subrecipient shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure of Subrecipient to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Subrecipient of any and all right or claims to collect moneys that Subrecipient may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 15.8 Upon the effective date of expiration or termination of this Agreement, Subrecipient shall cease all operations of work being performed by Subrecipient or any of its subcontractors pursuant to this Agreement.
- 15.9 Termination not sole remedy. In no event shall City’s action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City’s remedies, nor shall such termination limit, in any way, at law or at equity, City’s right to seek damages from or otherwise pursue Subrecipient for any default hereunder or other action.
- 15.10 Continuing Liability. Notwithstanding any exercise by City of its right of suspension or termination pursuant to this Agreement, Subrecipient shall not be relieved of any liability to City for damages due to City by virtue of any breach by Subrecipient of this Agreement with City.

- 15.11 Bankruptcy. If Subrecipient files any petition for bankruptcy, then this Agreement shall automatically be deemed to have terminated one (1) day prior to the filing of the petition for bankruptcy and, upon such termination, all SLFRF funds previously disbursed to Subrecipient, and/or for the benefit of Subrecipient, under this Agreement shall be repaid to City.

XVI. NOTICES

- 16.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice, or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier; or
- by electronic mail (“email”) to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

If intended for City, to:

Economic Development Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

Email:

If intended for Subrecipient, to:

LiftFund
President and CEO
2014 S. Hackberry
San Antonio, Texas 78210

Email:

Notice of change of email address, mailing address, or designated representative by either Party must be made in writing and mailed to the other Party’s last known address within five (5) business days of such change.

XVII. NONDISCRIMINATION

- 17.1 Non-Discrimination. As a party to this contract, Subrecipient understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.
- 17.2 Advancing Racial Equity. Projects funded with State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) should advance shared interests and promote equitable

delivery of government benefits and opportunities to underserved communities, as outlined in Executive Order 13985.

- 17.3 Title VI Requirements for Subrecipients under the City’s Award Terms and Conditions. The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

XVIII. INSURANCE

- 18.1 Within ten (10) business days of execution of this Agreement, Subrecipient shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the Risk Management Department, which shall be clearly labeled “*City of San Antonio COVID Impact Grants*” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Economic Development Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
- 18.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 18.3 A Subrecipient’s financial integrity is of interest to the City; therefore, subject to Subrecipient’s right to maintain reasonable deductibles in such amounts as are approved by the City, Subrecipient shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Subrecipient’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>INSURANCE TYPE</u>	<u>LIMITS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims Made) To be maintained and in effect for no less than two years subsequent to the completion of the services	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. First Party Crime Coverage, to include Third Party Crime Coverage Endorsement or a Blanket Crime Coverage	\$1,000,000 Per Claim on First Party Coverage \$1,000,000 Per Claim on Third Party Coverage

18.4 If applicable, Subrecipient agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Subrecipient herein and provide a certificate of insurance and endorsement that names the Subrecipient and the City as additional insureds. Subrecipient shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

18.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Subrecipient shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Subrecipient shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 18.6 Subrecipient agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- 18.6.1 Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - 18.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - 18.6.3 Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - 18.6.4 Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 18.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Subrecipient shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Subrecipient's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 18.8 In addition to any other remedies the City may have upon Subrecipient's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Subrecipient to stop work hereunder, and/or withhold any payment(s) which become due to Subrecipient hereunder until Subrecipient demonstrates compliance with the requirements hereof.
- 18.9 Nothing herein contained shall be construed as limiting in any way the extent to which Subrecipient may be held responsible for payments of damages to persons or property resulting from Subrecipient's or its subcontractors' performance of the work covered under this Agreement.
- 18.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

- 18.11 Subrecipient and any subcontractors are responsible for all damage to their own equipment and/or property.

XIX. INDEMNIFICATION

- 19.1 **SUBRECIPIENT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to SUBRECIPIENT'S activities under this Agreement, including any acts or omissions of SUBRECIPIENT, any agent, officer, director, representative, employee, contractor or subcontractor of SUBRECIPIENT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT SUBRECIPIENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 19.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SUBRECIPIENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or SUBRECIPIENT known to SUBRECIPIENT related to or arising out of SUBRECIPIENT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at SUBRECIPIENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving SUBRECIPIENT of any of its obligations under this paragraph.
- 19.3 Defense Counsel. City shall have the right to select or to approve defense counsel to be retained by Subrecipient in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Subrecipient shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Subrecipient fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Subrecipient shall be liable for all costs incurred by City. City shall also have the right, at its option, to be

represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

- 19.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Subrecipient, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subrecipient or any subcontractor under worker’s compensation or other employee benefit acts.

XX. CONTRACTING

- 20.1 Subrecipient shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Subrecipient. Subrecipient, its employees or its subcontractors shall perform all necessary work.
- 20.2 Prior to the execution of a contract or agreement with a subcontractor to perform specified services under this Agreement, Subrecipient shall submit the request, to include the name of the subcontractor and services to be provided, to the City’s Economic Development Department Director, or designee, for approval.
- 20.3 To the extent that any work or services is subcontracted under this Agreement, Subrecipient agrees to the following subcontracting requirements and values:
- 20.3.1 Any work or services subcontracted hereunder shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of Subrecipient. Subrecipient is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.
- 20.3.2 Subrecipient shall conduct its own risk assessment for the City’s financial exposure under the terms of this Agreement and from that assessment determine whether criminal background checks should be required for personnel and/or contractors. Should Subrecipient determine that background checks are necessary to protect City’s financial interest, Subrecipient shall provide documentation showing that all of Subrecipient’s staff members and/or contractors have cleared a criminal background check within 30 days of execution of this Agreement.
- 20.4 Subrecipient shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by Subrecipient. Subrecipient shall bear full responsibility for performance by all subcontractors.

- 20.5 Subrecipient, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Subrecipient's subcontractor(s).

XXI. NON-ASSIGNMENT

- 21.1 This Agreement is not assignable. Notwithstanding any attempt to assign the Agreement, Subrecipient shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions herein. Subrecipient shall be held responsible for all funds received under this Agreement. By signing this Agreement, Subrecipient agrees that it will not knowingly award or pay funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by City or the federal government

XXII. CONFLICT OF INTEREST

- 22.1 Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities funded through this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future. Subrecipient agrees and acknowledges that it must disclose in writing to City any potential conflict of interest affected the Subaward in accordance with 2 CFR 200.112.

- 22.2 Subrecipient acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City-owned utilities. An officer or employee of the City has a “prohibited financial interest” in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

XXIII. POLITICAL ACTIVITY

- 23.1 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or

federal legislation.

XXIV. CHANGES AND AMENDMENTS

- 24.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be effected by amendment, in writing, executed by both City and Subrecipient. City Manager, or his/her designee, shall have authority to execute amendments on behalf of the City without further action of City Council. Subrecipient shall have the authority to execute amendments under authority granted by formal action under his/her governing body.
- 24.2 It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing ARPA and SLFRF funds as set forth this date, and the terms and conditions of this Agreement.
- 24.3 Any alterations, additions, or deletions to the terms of this Agreement required by changes in local, state and federal rules, regulations or laws applicable hereto are automatically incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law.

XXV. RELIEF FROM PERFORMANCE (FORCE MAJEURE)

- 25.1 In addition to relief expressly granted in this Agreement, Subrecipient may be granted relief from performance under this Agreement to the extent Subrecipient is prevented and/or impaired from compliance and performance by any Force Majeure Event. For purposes of this Agreement, a “**Force Majeure Event**” shall include an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster casualty, condemnation or other event beyond the reasonable control of Subrecipient. The burden of proof for such relief shall rest upon Subrecipient. To obtain relief based upon this Article XXV, Subrecipient must file a written notice with the City Attorney’s Office for approval, specifying the Force Majeure Event and the performance under this Agreement that such event is impairing. A Force Majeure Event does not release Subrecipient from the repayment of any funds disbursed under this Agreement.

XXVI. SEVERABILITY OF PROVISIONS

- 26.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or

provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXVII. LICENSES/CERTIFICATIONS

- 27.1 Subrecipient warrants and certifies that Subrecipient and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXVIII. INCORPORATION OF ATTACHMENTS

- 28.1 Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

Attachment A: Scope of Work

Attachment B. Eligibility Criteria & Scoring

Attachment C. Program Budget

Attachment D. ARPA/SLFRF Information for Subrecipients

Attachment E. ARPA SUBRECIPIENTS 2 CFR 200.3272 CFR 200 Appendix II
Requirements

Attachment F. U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL
FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS

XXIX. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

- 29.1 Subrecipient warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work or volunteer in connection with the Program.
- 29.2 Work performed under the Program must conform to Americans with Disabilities Act requirements.
- 29.3 Subrecipient understands and agrees that Subrecipient is required to refund money, pursuant to Texas Government Code, Chapter 2264, that Subrecipient has received from City through this Agreement, in the event of Subrecipient's conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.
- 29.4 Subrecipient will complete and submit City's Ethics Disclosure Form prior to

Subrecipient's receipt of any City funds.

- 29.5 Subrecipient agrees that City may carry out monitoring and evaluation of activities to ensure Subrecipient's compliance with this Agreement.

XXX. NON-WAIVER OF PERFORMANCE

- 30.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XXIV. Changes and Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXXI. LEGAL AUTHORITY

- 31.1 Subrecipient represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.
- 31.2 The signer of this Agreement for Subrecipient represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Subrecipient and to bind Subrecipient to all terms, performances and provisions herein contained.
- 31.3 City will have the right to suspend or terminate this Agreement in accordance with Article XV. if there is a dispute as to the legal authority, of either Subrecipient or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

XXXII. GOVERNING LAW AND VENUE

- 32.1 Texas Torts Claims Act. Subrecipient acknowledges that City is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

32.2 Notice of Claims. Subrecipient shall give City immediate notice in writing of: (i) any OSHA investigation of Subrecipient concerning the Project; (ii) bankruptcy of Subrecipient or any of its affiliates; and (iii) any notice given by Subrecipient to its employees at the Project site required under any applicable laws pertaining to contemplated job reductions at the Project Site. SUBRECIPIENT shall submit a copy of each such notice required hereunder to City within fifteen (15) calendar days after receipt or issuance, as applicable.

32.3 Venue. This Agreement shall be performed in Bexar County, Texas and shall be interpreted according to the Constitution and the laws of the State of Texas. Venue and jurisdiction of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

XXXIII. ATTORNEY'S FEES

33.1 In the event Subrecipient should default under any of the provisions of this Agreement and the City should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of Subrecipient, then Subrecipient agrees to pay to City its reasonable fees of such attorneys and such other expenses so incurred by the City so ordered by a court having jurisdiction over the Parties.

XXXIV. PARTIES BOUND

34.1 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXXV. CAPTIONS

35.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXXVI. GENDER

36.1 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXXVII. ENTIRE AGREEMENT

37.1 This Agreement, together with its authorizing ordinance and its exhibits, constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same be in writing,

dated subsequent to the date hereof and duly executed by the Parties, in accordance with Article XXIV. Changes and Amendments.

XXXVIII. COUNTERPARTS, ELECTRONIC SIGNATURE AND DELIVERY

38.1 This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of applicable Texas or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

LIFTFUND INC.

Eric Walsh
City Manager

Richard Ruebe
President

Date

Date

Approved as to Form:

Assistant City Attorney

ATTACHMENT A SCOPE OF SERVICE

I. Scope of Work

The Scope of Work for the COVID Impact Grant Program consists of the following deliverables:

a. Marketing and Outreach

- Create a free, publicly accessible webpage for the COVID Impact Grant Program with access to the grant application and listing of grant criteria and information. City of San Antonio will provide the branding guidelines and related imagery.
- Develop a promotional plan that educates potential applicants about the opportunity, especially among the hardest-to-reach populations without digital access as follows:
 - Website and all communications materials available in Spanish and English
 - Three (3) info sessions with live translation, one (1) prior to application period, two (2) during application period.
 - Press release prior to application period. (optional press conference hosted by COSA)
 - Community navigator partners with commitment to two (2) events and five (5) eblasts/social media posts each prior to and during application period.
 - Social media promotion on LiftFund networks prior to and during application period.
 - Eblast to LiftFund COSA clients.
- Provide information to awardee recipients about resources available to assist their business as prepared by the City.

b. Technical Assistance

- Provide direct assistance, and/or partner with organizations who can provide assistance, to applicants that do not have capacity to complete an online or paper grant application or secure required documentation.

c. Application and Award

- Develop the grant application content and questions to include an attestation that all information provided is correct and true.
- Collect and review grant applications and related required financial documents to assess eligibility for grants.
- The application period will be open from August 1 at 10:00am CST – August 22 at 5:00pm CST
- Score and prioritize grant applications based on criteria established by the City of San Antonio in Attachment B
 - The City will provide shape files, ARPA 4 Arts awardee list, SBA Restaurant Revitalization Fund (RRF) local awardees list and any additional supporting documentation to adequately score applications as mutually discussed and agreed to in writing by both parties.
- Ensure timely distribution of grants. Track and report distribution of grants as outlined per the Grants Award Analysis Report.

d. Reporting and Metrics

- A Grants Award Analysis Report shall be submitted to City no later than December 13, 2022 and shall include business, demographics (gender, ethnicity, veteran status, industry

by NAICS), geography (address, identification of City Council District the business resides), grant amounts, current number of employees (full-time jobs, part-time jobs).

- LiftFund shall perform follow-up surveys of grant awardees to collect the data necessary to fulfill the Expected Outcomes indicated in Attachment A: Scope of Work. The COVID Impact Grant Program Six (6) Month Outcomes Report is due on or before May 1, 2023. The COVID Impact Grant Program Eighteen (18) Month Outcomes Report is due on or before May 1, 2024. The COVID Impact Grant Program Thirty-Six (36) Month Outcomes Report is due on or before May 1, 2025.
- Compile a contact list of all business grant applicants to include name of business, business owner, business address, phone number and email address to allow the Economic Development Department to connect businesses with respective outreach group and other available resources. The contact list should be provided to Economic Development on or before November 14, 2022.

II. Expected Outcomes

- At least 500 - 600 businesses will receive grants. The amounts are dependent on the eligible category for consideration and LiftFund's assessment and calculation of applicant loss.
- 100% of grant funding to be disbursed to eligible entities by December 12, 2022.

III. Grant Eligibility

All completed applications will be reviewed for eligibility. Grant awards are limited to one per each physical address within the City of San Antonio. Also, only one grant will be awarded per business with more than one location. Grant applicants are only eligible to receive one grant award. Each application will be reviewed for eligibility based on the criteria identified in Attachment B. To ensure Program objectives are achieved, the City reserves the right to adjust eligibility requirements should current criteria yield insufficient qualifying applicants.

IV. Application Documentation

The grant application will require verification of pertinent documentation. Any applicants that are unable to provide the required documents may continue to submit a grant application for review; however, alternative evidence shall be requested by LiftFund to establish impact from Covid-19.

Upon complete submission of the grant application, the applicant will receive a confirmation email with a timeline with deliverables, and an email and phone number for status inquiries. LiftFund will contact individuals with incomplete applications within three business days of the initial review of the application to request documentation necessary to complete application review and/or assessment of loss and COVID-19 impact. Applicants will be provided up to five business days to submit requested items.

The documentation required for grant application submittal includes:

- Business entity formation document (document from Bexar County or Secretary of State with date of formation) prior to January 1, 2020. Other documentation to prove entity formation may be acceptable;
- 2019, 2020 and 2021 Business tax return to determine gross revenue and prove losses;
 - If the 2021 tax return has not been filed, a detailed year end 2021 Profit & Loss Statement (P&L) may be substituted.
- Driver's license; or government-issued photo identification.

- Proof of Business location;
- Q1 2022 Form 941, Q1 2022 payroll report or Q1 2022 check copies to employees; and
- DD214 (veterans only)

V. Application Scoring Process & Grant Amounts

LiftFund will assign each grant application a combined score and order from highest ranking to lowest ranking based on the five grant categories and construction impact eligibility utilizing criteria outlined in Attachment B. LiftFund will award grants in the starting with the highest scoring applications until funds are exhausted in amounts identified in Attachment B.

VI. Timeline

Timeline of Deliverables	
July 25, 2022	Finalize application and website drafts for EDD review. Onboarding of community navigators. Program promotion and outreach, targeting underrepresented communities.
August 1 – 22, 2022	Application Open Period
August 23, 2022	Grant funding allocation payment released from City to LiftFund
August 23 -26, 2022	Data scrub week and scoring
August 26, 2022	First applicant Analysis Report submitted to EDD. Weekly pipeline reports submitted until program concludes.
August 29 – December 2	Application Review, doc collection
September 7 – December 5	Award notification via Docusign
September 14 – December 12	Funding disbursement to awardees
December 13, 2022	Final Grants Award Analysis Report and applicant contact list due to EDD
December 22, 2022	Second Administrative Fee Payment due from City to LiftFund
May 1, 2023	Six (6) Month Outcomes Report is due
May 1, 2024	Eighteen (18) Month Outcomes Report is due
May 1, 2025	Thirty-Six (36) Month Outcomes Report is due

ATTACHMENT B
Eligibility Criteria & Scoring

PROGRAM GOALS:

Small businesses need support, technical assistance, and tools to support their recovery from the COVID-19 pandemic while building long-term resiliency. Recognizing this, San Antonio is implementing the COVID Impact Grants program to provide meaningful and efficient support to small businesses that continue to work toward recovery from the economic strife caused by the public health crisis and secondary impacts associated with the pandemic.

GRANT ELIGIBILITY:

Applicants must meet all the following criteria to be eligible for the COVID Impact Grants:

- Business is in one of the eligible NAICS codes provided below. These NAICS codes were identified as experiencing at least 5% employment loss from pre-pandemic levels
- Reduction in gross revenues in 2020 and 2021 when compared to 2019
- Minimum 20% reduction in gross revenues from 2019 to 2021
- Must meet SBA size standards for small businesses for 6-digit NAICS code
- Established prior to January 1, 2020 with demonstrated revenue in 2019
- Be in operation and not filed for bankruptcy at time of application
- Primarily be located within San Antonio city limits and remain for one year from date of grant award
- Not be in the following categories: gambling/gaming businesses; franchisors; sexually oriented businesses; payday & auto loan providers; liquor stores and businesses in which a City employee or officer has a financial interest, as defined in Sec. 2-53 of the City's Ethics Code
- Not have applied for any other City of San Antonio grant programs funded by the American Rescue Plan Act (ARPA), including, but not limited to ARPA 4 Arts and SBA Restaurant Revitalization Fund (RRF).
- Grant applicant must be authorized representative of business

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Eligible NAICS codes:

Demonstrated a 5% loss or more in employment 2021 compared to 2019.

NAICS	Industry	Employment Loss
213	Support Activities for Mining	-80.9%
512	Motion Picture and Sound Recording Industries	-55.7%
519	Other Information Services	-48.0%
331	Primary Metal Manufacturing	-38.6%
711	Performing Arts, Spectator Sports, and Related Industries	-37.6%
721	Accommodation	-33.7%
487	Scenic and Sightseeing Transportation	-32.7%
486	Pipeline Transportation	-30.2%
448	Clothing and Clothing Accessories Stores	-29.7%
485	Transit and Ground Passenger Transportation	-25.0%
532	Rental and Leasing Services	-24.3%
333	Machinery Manufacturing	-23.4%
323	Printing and Related Support Activities	-22.6%
115	Support Activities for Agriculture and Forestry	-22.5%
211	Oil and Gas Extraction	-22.4%
212	Mining (except Oil and Gas)	-17.6%
316	Leather and Allied Product Manufacturing	-17.4%
518	Data Processing, Hosting, and Related Services	-16.5%
515	Broadcasting (except Internet)	-15.7%
623	Nursing and Residential Care Facilities	-12.2%
425	Wholesale Electronic Markets and Agents and Brokers	-11.2%
442	Furniture and Home Furnishings Stores	-10.9%
339	Miscellaneous Manufacturing	-10.8%
315	Apparel Manufacturing	-10.8%
722	Food Services and Drinking Places	-10.5%
812	Personal and Laundry Services	-10.4%
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	-10.3%
326	Plastics and Rubber Products Manufacturing	-9.6%
453	Miscellaneous Store Retailers	-8.8%
624	Social Assistance	-8.8%
322	Paper Manufacturing	-8.2%
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	-8.1%
622	Hospitals	-7.5%
236	Construction of Buildings	-5.9%
424	Merchant Wholesalers, Nondurable Goods	-5.9%
321	Wood Product Manufacturing	-5.6%
712	Museums, Historical Sites, and Similar Institutions	-5.5%
713	Amusement, Gambling, and Recreation Industries	-5.5%
451	Sporting Goods, Hobby, Musical Instrument, and Book Stores	-5.4%
112	Animal Production and Aquaculture	-5.2%
446	Health and Personal Care Stores	-5.0%
524	Insurance Carriers and Related Activities	-5.0%

SCORING MATRIX:

Scoring Matrix		
Reduction in Gross Revenue 2019 to 2021	30	Points
40% or Greater		30
30% - 39.9%		20
20% - 29.9%		10
Industry Employment Loss	30	Points
25% or greater		30
20 – 24.9 %		25
15-19.9%		20
10-14.9%		15
5-9.9%		10
Demographic Criteria	20	Points
Minority-Owned		5
Women-Owned		5
Veteran-Owned		5
Disabled-Owned		5
Equity Atlas Score	20	Points
Equity Atlas Score 8-10		20
Equity Atlas Score 5-7		10
Equity Atlas Score 2-4		0
Other Grant Funding Received*	15	Points
\$0		15
\$1 to \$10,000		10
\$10,001 to \$25,000		5
\$25,001 or more		0

*To include PPP, EIDL, Restaurant Revitalization Fund, and COSA Recovery and Hospitality Grants

GRANT FUNDING AND CATEGORY AMOUNTS:

Reduction in Gross Revenue	Grant Amount
20% - 29.9%	\$15,000
30% - 39.9%	\$25,000
40% or Greater	\$35,000

CONSTRUCTION IMPACT FUNDING:

Additional funding of \$10,000 will be available to businesses located within major, City-initiated construction zones. The following projects started within the timeframe of October 1, 2019 and December 31, 2021 and include project duration time of at least 18 months.

Eligible projects include:

- The Alamo (Area Streets)
- Broadway Street Corridor (East Houston Street to IH35)
- Prue Road (Babcock Road to Laureate Drive) (D/B)
- Harry Wurzbach Road/Austin Highway Connectors
- West Commerce Street (Frio Street to Colorado Street)
- Goliad Road (Fair Avenue to East Southcross Boulevard)
- Commerce Street (St. Mary's Street to Santa Rosa Street)
- Cedarhurst Drive Area (Dumont Drive to Eaglerock Drive)
- North St. Mary's Street (East Mistletoe Avenue to West Josephine Street)
- Brooks City Base South New Braunfels Avenue (Lyster Road to Aviation Landing)
- North New Braunfels Avenue Phase 1 (East Houston Street to Burleson Street)
- Bulverde Road Phase 1 (Butterleigh Drive to North of Quiet Meadow Street)
- West Military Drive & Westmar Drive Area
- Enrique M. Barrera Parkway Phase 1 (Old Highway 90 Area)
- Brooks City Base Inner Circle Road (Louis Bauer Drive to Research Plaza)
- Barbara Drive Drainage Phase 2
- Auldine Drive & Burr Oak Drive (Alley to Outfall)
- Mission Road (San Antonio River to Southeast Military Drive)
- Fredericksburg Road (North Flores Street to West Woodlawn Avenue)

**ATTACHMENT C
PROGRAM BUDGET**

Expense Category	Associated Cost
Personnel & Benefits	\$500,000
System & Supplies	\$75,000
Contractual/Scope of Work	\$600,000
Program and Operation Support	\$185,000
COVID-19 Impact Grants Allocation	\$15,640,000
Total Program Cost	\$17,000,000

ATTACHMENT D

ARPA/SLFRF Information for Subrecipients

This Contract results in a subaward of federal assistance provided by the US Department of Treasury under Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act (ARPA) Pub. L. No. 117-2 (March 11, 2021). Liftfund is a subrecipient and the City is a pass-through entity for purposes of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR 200. This information is required by 2 CFR 200.332 Requirements for Pass-Through Entities and guidance issued by Granting Agency. Subrecipient must notify City in writing, of changes to the data elements. Required information includes:

1. Federal Award Identification

- i. Subrecipient Identifying and Demographic Information:
 - a. Subrecipient's name (must match the name associated with its Unique Entity Identifier):
 - b. Location:
- ii. Subrecipient's Unique Entity Identifier:
- iii. Federal Award Identification Number (FAIN):
- iv. Federal Award Date of award to the Recipient by the Federal agency:
- v. Subaward Period of Performance Start Date:
- vi. Subaward Period of Performance End Date:
- vii. Amount of Federal Funds Obligated by this Agreement by the Pass-Through Entity including the current financial obligation: \$
- viii. Total Amount of Federal the Federal Award committed to the Subrecipient by the Pass-Through Entity: \$
- ix. Federal Award program description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA):
- x.
 - a. Name of Federal Awarding Agency: Department of Treasury
 - b. Pass-Through Entity: City of San Antonio, Texas
 - c. Contact Information for Awarding Official of the Pass-Through Entity:
 - Name:
 - Phone:
 - Email:
- xi. Is award for Research & Development (R&D)?: No
- xii. Indirect Cost Rate for Federal award (including if the de minimis rate is charged) per 200.414:
- xiii. Primary Place of Performance:
- xiv. Related Project Name(s):
- xv. Related Project Identification Number(s) (created by the Pass-Through Entity):

ATTACHMENT E
ARPA SUBRECIPIENTS
2 CFR 200.327
2 CFR 200 Appendix II Requirements

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C.

1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- (J). 200.323 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (K) Prohibition on certain telecommunications and video surveillance services or equipment.
- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
 - (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected

businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

- (c) See Public Law 115-232, section 889 for additional information.
- (d) See also 2 CFR 200.471.

(L) Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

ATTACHMENT F
U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY
FUND AWARD TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records.
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. Subrecipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Subrecipient and subcontractors must disclose in writing

to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

- a. Subrecipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.

- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance; 4
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Subrecipient’s noncompliance with section 603 of the Act, other applicable laws, Treasury’s implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Subrecipient] by the U.S. Department of the Treasury.”

14. Debts Owed the Federal Government.

- a. Any funds paid to Subrecipient (1) in excess of the amount to which Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Subrecipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed the federal government must be paid promptly by 5 Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Subrecipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its contractors to adopt and enforce on-the job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers