

CITY OF SAN BERNARDINO AMERICAN RESCUE PLAN ACT SUBAWARD AGREEMENT

This Subaward Agreement ("Agreement") is between the City of San Bernardino, a California charter city ("City"), and the Lutheran Social Services of Southern California ("Subrecipient"). City and Subrecipient may be individually referred to herein as the "Party" and collectively as the "Parties."

RECITALS

- A. On March 10, 2021, the United States Congress passed, and on March 11, 2021, President Joseph Biden signed into law, the American Rescue Plan Act ("ARPA").
- B. ARPA established the Coronavirus State Fiscal Recovery Fund ("CSFRF") and Coronavirus Local Fiscal Recovery Fund ("CLFRF"), together known as the Coronavirus State and Local Fiscal Recovery Funds ("CSLFRF") program, which provides a combined \$350 billion in assistance to eligible state, local, territorial, and Tribal governments to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery.
- C. The City received federal funding in the form of the CSLFRF under ARPA in response to the coronavirus ("COVID-19") pandemic. These funds may be used to carry out a wide range of community development activities, including those that benefit local communities.
- D. The Interim Final Rule on CSLFRF issued by the Department of the Treasury ("Treasury") effective May 17, 2021, and the Final Rule issued by the Department of the Treasury effective April 1, 2022, (together, the "Rule") provide the rules and guidelines for how CSLFRF funds may be spent.
- E. ARPA states the City may grant subawards to subrecipients for the furtherance of an ARPA eligible use. City desires to make a grant of CSLFRF funds to the Subrecipient, in accordance with the terms of this Agreement and all applicable provisions of ARPA, to carry out the services that the Subrecipient will provide ("Services" or "Project").

TERMS AND CONDITIONS

Now, therefore, in consideration of the above recitals, which are hereby fully incorporated into this Agreement, and the mutual covenants contained herein, City and Subrecipient agree as follows:

1. **Scope of Services, Budget.** The scope of the Services is set forth in the attached Scope of Work and Budget, which is included as Exhibit "A" to this Agreement.

2. **Term.** The term of this Agreement begins on May 1, 2023, and continues through December 31, 2026, unless modified or terminated in accordance with this Agreement. Subrecipient certifies that the use of funds will be used only to cover expenditures allowed under ARPA and incurred during the Term. Any cost obligated by Subrecipient as of December 31, 2024, must be expended by December 31, 2026, to meet the eligible costs timeframe as defined by the United States Department of the Treasury.
3. **Compensation** City will provide Subrecipient with an amount not-to-exceed \$5,000,000 (the "Grant Funds"). Any expenses and costs incurred by the Subrecipient in excess of the Grant Funds shall be the sole responsibility of the Subrecipient. Subrecipient shall use the Grant Funds for the Services. Subrecipient shall submit a Reimbursement Request to the City for payment of the Grant Funds in accordance with the Reimbursement Procedures that is attached hereto as Exhibit "B." Subrecipient agrees that all expenditures are to be in accordance with the terms of this Agreement.
4. **Availability of Funds.** City's payment to Subrecipient under this Agreement is contingent on the availability of program funds and continued federal and state authorization for the funded program activities.
5. **Performance Monitoring.** The City will monitor the performance of the Subrecipient against goals and performance standards required herein or by ARPA. Substandard performance, as determined by the City in its sole discretion, will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time, but no later than 10 days, after being notified by the City, the City may suspend any pending disbursements of Grant Funds or may, in its sole discretion, terminate this Agreement in the manner provided herein.
6. **Modification and Termination.**
 - 6.1 City may modify or terminate this Agreement at any time if in good faith City deems it necessary to:
 - (A) Respond to a reduction or elimination of funds or discontinued authorization; or
 - (B) Comply with changes in City, state, or federal legislation, regulation, or policy.
 - 6.2 Any modification of this Agreement must be by written amendment, signed by both Parties. If City modifies the Agreement and Subrecipient refuses to accept the modification by executing a corresponding amendment, City may terminate the Agreement for cause.
7. **Commencement of Performance.** Subrecipient may not obligate or request disbursement of funds, incur any cost, or initiate identified Services that are the

subject of this Agreement until each of the following provisions has been fully satisfied:

- 7.1 Subrecipient must furnish proof of insurance as required by this Agreement.
- 7.2 City has obtained proof that Subrecipient is registered on SAM.gov and that Subrecipient is not suspended or barred from federally funded programs.
- 7.3 Subrecipient has provided City with a completed Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 2020, as issued by the Internal Revenue Service).
- 7.4 This Agreement is fully executed by the Parties.

8. Representatives of the Parties and Service of Notice. The Parties' respective representatives who are primarily responsible for the administration of the Agreement, and to whom formal notice, demands and communications must be given, are as follows:

- 8.1 The principal representative of the City is:

City of San Bernardino
Community & Economic Development Department
290 North D Street
San Bernardino, CA 92401

- 8.2 The principal representative of Subrecipient is:

Lutheran Social Services of Southern California
999 Town and Country Road, Suite 100
Orange, CA 92868

- 8.3 Notices, demands, and communications to be given hereunder by either Party must be made in writing and affected by personal delivery or by mail. When mailed and addressed in accordance with this section, notice is deemed given upon deposit in the U.S. mail, postage pre-paid. In all other instances, notice is deemed given at the time of actual delivery.

- 8.4 Each Party will provide the other with the name and current contact information of its principal representative within five (5) business days after designating a new principal representative or after any change to the representative's contact information.

9. Compliance with Laws. Subrecipient shall comply with all federal, state and local laws, ordinances, rules and regulations as well as applicable codes of ethics, pertaining to or regulating the provision of the services, including those now in effect and hereafter adopted. Any violation of such laws, ordinances, rules and regulations, and applicable codes of ethics shall constitute a material breach of

this Agreement and shall entitle the City to terminate this Agreement immediately upon delivery of written notice of termination to the Subrecipient.

10. Federal Terms and Conditions.

10.1 The Grant Funds must be used strictly in accordance with the ARPA Requirements attached hereto as Exhibit "C," which are incorporated herein by this reference. To the extent that any provision contained in Exhibit "C" conflicts with any provision of this Agreement, Exhibit "C" governs.

10.2 Any Grant Funds expended by Subrecipient in any manner that does not adhere to the ARPA Requirements and this Agreement shall be returned or repaid to the City. This includes, but is not limited to, funds paid to Subrecipient: i) in excess of the amount to which Subrecipient is finally determined to be authorized to retain; ii) that are determined to have been misused; or iii) that are determined to be subject to a repayment obligation pursuant to section 603(e) of ARPA.

11. Independent Contractor. Subrecipient is an independent contractor. As such, Subrecipient has no power or authority to incur any debt, obligation, or liability on behalf of City. Further, neither Subrecipient nor anyone working on its behalf is not entitled to any benefit typically associated with an employee such as medical, sick-leave, or vacation benefits.

12. PERS Eligibility Indemnity

12.1 In the event that Subrecipient or any employee, agent, or subcontractor of Subrecipient providing Services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Subrecipient will indemnify, defend, and hold harmless City for the payment of any employee or employer contribution for PERS benefits for Subrecipient or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, that would otherwise be the responsibility of City.

12.2 Notwithstanding any other state or federal policy, rule, regulation, law, or ordinance to the contrary, Subrecipient and any of its employees, agents, and subcontractors providing Services under this Agreement do not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution or employee contributions for PERS benefits.

13. Indemnity and Insurance

- 13.1 *Indemnity.* Subrecipient will hold City and its employees, officers, and agents free and harmless from all losses, claims, liens, demands, and causes of action of every kind and character, including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees, and all other expenses incurred by City to the maximum extent allowed by law arising in favor of any party, including claims, liens, debts, personal injuries, including employees of City, death or damages to property (including property of City) and without limitation by enumeration, all other claims or demands of every character occurring or arising directly out of or as a consequence of the performance of the Services, this Agreement, violation of ARPA Requirements, and use of the Grant Funds, except only such injury to persons or damage to property due or claimed to be due to the sole negligence or willful misconduct of City.
- 13.2 *Insurance.* Subrecipient will procure and maintain at all times during the term of this Agreement insurance as set forth in Exhibit "D" attached hereto.

14. Records, Inspections, and Reports.

- 14.1 Subrecipient will maintain full and accurate records with respect to all Services and matters covered under this Agreement. City may have free access at all reasonable times to such records, and has the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings, and activities. Subrecipient understands and agrees that City may, at any time, request additional information that may be required for the purpose of making necessary reports to Treasury, or for otherwise evaluating Subrecipient's progress and performance under this Agreement. In the event of such requests, Subrecipient will comply by providing the appropriate data within ten (10) working days from the date of any such request.
- 14.2 The City, Treasury Department, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, documents, papers and records maintained by the Subrecipient in connection with the Services for the purpose of audit, examination, excerpts and transcriptions.
- 14.3 Subrecipient further understands and agrees that the records and additional information described in this section must be retained on a continuing basis for a period of five (5) years after this Agreement has expired, as required for compliance with ARPA Requirements.
- 14.4 Subrecipient shall submit "Quarterly Reports" during the term of this Agreement, within thirty (30) calendar days of the end of each quarter. The first Quarterly Report is due on or before June 30, 2023, and the final Quarterly Report is due no later than November 1, 2026. Each Quarterly Report must include sufficient information to assist the City in monitoring

the Subrecipient's performance under the terms of this Agreement. The Subrecipient must submit its Quarterly Report and demonstrate satisfactory performance, at the sole discretion of the City, prior to reimbursement for expenditures under a Reimbursement Request.

15. Audit Requirements.

- 15.1 Subrecipient is responsible for conducting an annual audit of its ARPA spending in compliance with the Office of Management and Budget (OMB) 2 CFR Chapter 1, Chapter II, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Final Rule, as applicable. A copy of the required audit or financial statement must be forwarded to City upon completion. Any costs associated with the annual audit are the responsibility of Subrecipient.
- 15.2 Subrecipient shall cooperate in having an audit completed by City, at City's option and expense.
- 15.3 Subrecipient shall repay to County any reimbursement for ARPA funding that is determined by subsequent audit to be unallowable under ARPA within the time period required by the ARPA, but no later than one hundred twenty (120) days of Subrecipient receiving notice of audit findings, which time shall include an opportunity for Subrecipient to respond to and/or resolve the findings. Should the findings not be otherwise resolved and Subrecipient fail to reimburse moneys due City within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between the Parties or required by the ARPA, City reserves the right to withhold future payments due Subrecipient from any source under City's control.

- 16. **Prevailing Wage.** Subrecipient is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 1600 *et seq.* ("State Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the funds are used as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Subrecipient agrees to fully comply with such State Prevailing Wage Laws.

- 17. **Confidentiality.** Employees of Subrecipient may, in the course of their duties, have access to financial, accounting, statistical, and personnel data of private individuals and of employees of City. Subrecipient covenants that all data, documents, discussion, or other information developed or received by Subrecipient or provided for performance of this Agreement are deemed confidential and may not be disclosed by Subrecipient without written authorization by City. City will grant such authorization if disclosure is required by law. All City

data must be returned to City upon the termination of this Agreement. Subrecipient's covenant under this section survives termination of this Agreement.

18. **Termination for Convenience.** Either City or Subrecipient may terminate this Agreement at any time without cause by giving the other written notice of the date of termination at least 30 calendar days before. If this Agreement is terminated as provided herein by Subrecipient, Subrecipient will return all Grant Funds provided to Subrecipient under this Agreement to City within thirty (30) calendar days.
19. **Termination for Cause.** If for any reason, Subrecipient fails to fulfill in a timely and proper manner its obligation under this Agreement, or if Subrecipient violates any of the covenants of this Agreement, City has the unilateral right to terminate this agreement by giving Subrecipient written notice at least five (5) calendar days before termination. The notice must refer to this clause, specify the nature of the alleged default, and specify the effective date of the termination. If this Agreement is terminated as provided herein, Subrecipient will return all ARPA funds provided to Subrecipient under this Agreement to City within thirty (30) calendar days.
20. **Assignment and Subcontracting.** Neither Party may assign or subcontract the rights or responsibilities under this agreement without the express, written consent of the other Party, which consent may be withheld for any reason or for no reason.
21. **Permits and Licenses.** Subrecipient, at its sole expense, will obtain and maintain during the term of this Agreement all appropriate permits, licenses, and certificates that are required for the performance of the Services.
22. **Standard.** All Services to be rendered under this Agreement must be performed in accordance with the standards that are customarily observed by an experienced and competent professional organization rendering the same or similar services. Subrecipient will re-perform any of said Services that are not in conformity with applicable standards, as determined by City.
23. **Resolution of Disputes**
 - 23.1 Disputes regarding the interpretation or application of any provision of this Agreement must, to the extent reasonably feasible, be resolved through good-faith negotiations between the Parties.
 - 23.2 If any action at law or in equity is brought to enforce or to interpret any provision of this Agreement, the prevailing party is entitled to recover reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.
24. **Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Subrecipient may not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age physical or mental handicap, medical condition, or sexual orientation. Subrecipient will take affirmative action to

ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

25. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions continue in full force and effect without being impaired or invalidated in any way.
26. **Governing Law and Venue.** This Agreement is governed by and must be construed in accordance with laws of the State of California. In the event of litigation between the Parties, venue in state trial courts lies exclusively in the County of San Bernardino. In the event of litigation in a U.S. District Court, venue lies exclusively in the Central District of California.
27. **Entire Agreement.** This Agreement, together with Exhibits "A," "B," "C," "D," and "E" supersede all other agreements, whether oral or in writing, between the Parties with respect to its subject matter. Each Party to this Agreement acknowledges that no representation by any Party that is not embodied herein, nor any other agreement; statement, or promise not contained in this Agreement, is valid or binding.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF this Agreement is entered into by the Parties hereto on the last date set forth below.

CITY OF SAN BERNARDINO

Charles E. McNeely

Charles E. McNeely
Interim City Manager

Date: 5/15/2023

SUBRECIPIENT

LaSharnda Beckwith

Dr. LaSharnda Beckwith
President & CEO

Date: 5/17/2023

ATTEST:

Genoveva Rocha

Genoveva Rocha, CMC
City Clerk

APPROVED AS TO FORM:

Thomas Rice

Best Best & Krieger LLP
City Attorney

Approved by City Council on: April 26, 2023

EXHIBIT “A”

SCOPE OF SERVICES AND BUDGET

The general purpose of this program is for the construction for its 140 interim housing beds and 30 semi-private emergency shelter beds. The following construction deliverables will be needed:

SUBRECIPIENT IS RESPONSIBLE FOR:

- Conducting community outreach and engagement activities to ensure the facility is responsive to the needs of the community
- Obtaining all necessary permits and approvals from local, state, and federal agencies
- Developing a detailed design and engineering plan for the modular housing units, central building, and onsite supportive services
- Conducting site preparation activities, such as grading, excavation, and utility installation, based on the design and engineering plan
- Constructing modular interim housing units to accommodate a minimum of 140 beds and 30 emergency shelter beds
- Installing essential services, such as water, sewer, electrical, and heating/cooling systems, based on the design and engineering plan
- Constructing a central building to house administrative offices, case management services, and onsite supportive services, based on the design and engineering plan
- Completing onsite supportive services, such as job training/placement, housing navigation, and case management, as outlined in the design and engineering plan
- Conducting a final inspection and approval of all construction deliverables and services
- Submitting all required documentation to the local agency overseeing the ARPA funds to disburse the remaining funds, as needed.

BUDGET/EXPENDITURES

1. The following is the list of projected expenditures that will be funded by the Grant Funds

Expenditure Type	Projected Expenditures
Pre-Development	\$2,000,000
Site Preparation	\$1,000,000

Completing the construction of the 140 noncongruent interim housing beds and 30 emergency shelter beds	\$1,000,000
Providing ongoing case management services to ensure residents have the resources and support needed to maintain permanent housing and employment	\$1,000,000
Total Expenditure	\$5,000,000

EXHIBIT "B"

REIMBURSEMENT PROCEDURES

1. **BILLING.** By the 15th of each month, Subrecipient will submit a Reimbursement Request to City, along with a performance report and supporting documentation that are required by the Agreement. Subrecipient will submit the Reimbursement Request to City at the following address:

City of San Bernardino
Community and Economic Development Department
290 North D Street
San Bernardino, CA 92401

Each Reimbursement Request shall include documentation to verify that the expenditure of funds is consistent with the Agreement. Payroll records, receipts and paid invoices including an itemized statement of all costs are samples of appropriate methods of reimbursement documentation.

Prior to approving a Reimbursement Request, the City will verify that the Subrecipient has met all applicable ARPA Requirements. The City shall not provide any payments or reimbursements in advance of actual expenditures by the Subrecipient nor for any expenditures unrelated to the Services.

If a Reimbursement Request is rejected, or revisions are requested, Subrecipient will work with City to submit the required revisions.

Subrecipient shall not claim reimbursement or payment from City for, or apply sums received from City with respect to that portion of its obligations that have been paid by another source of revenue.

2. **TIME OF PAYMENT.** City will make payment to Subrecipient in accordance with City's regular billing cycle after receipt of Subrecipient's Reimbursement Request and City's approval of the request.

EXHIBIT “C”

ARPA REQUIREMENTS

1. COMPLIANCE WITH ARPA REQUIREMENTS

- 1.1 Subrecipient agrees that it undertakes hereby the same obligations to City that City has undertaken to Treasury by way of City's acceptance of ARPA funds. The obligations thus undertaken by Subrecipient include, but are not limited to, the obligation to comply with the following:
- (A) Sections 602 and 603 of the Social Security Act as added by Section 9901 of the American Rescue Plan Act of 2021 (“ARPA”);
 - (B) CSLFRF Final Rule, codified at 31 CFR Part 35;
 - (C) CSLFRF Guidance on Recipient Compliance and Reporting Requirement, the most current version;
 - (D) 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, other than such provisions as the U.S. Department of the Treasury may determine are inapplicable to the CSLFRF program and subject to such exceptions as may be otherwise provided by the U.S. Department of the Treasury. This includes ensuring that any procurements using ARPA funds are consistent with the procurement standards in the Uniform Guidance at 2 CFR 200.317 through CFR 200.327, as applicable. A procurement checklist is attached hereto as Exhibit “E”; and
 - (E) Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions.
- 1.2 Failure to meet established performance goals and standards or non-compliance with applicable rules and regulations constitutes non-compliance with the terms of this Agreement. City is entitled to avail itself of one or more of the following remedies to address noncompliance:
- (A) Temporarily withhold cash payments pending correction of deficiencies by Subrecipient;
 - (B) Disallow all or part of the cost of the activity or action not in compliance
 - (C) Wholly or partly suspend or terminate the current award for Subrecipient's program;
 - (D) Withhold further awards for the program; or

(E) Take other remedies that may be legally available.

2. COMPLIANCE WITH U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS

2.1 Maintenance of and Access to Records. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of ARPA, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. Subrecipient agrees to provide the City, Treasury Office of Inspector General and the Government Accountability Office, or any of their authorized representatives access to any books, documents, papers, and records (electronic and otherwise) of the Subrecipient which are directly pertinent to this Construction Contract for the purposes of conducting audits or other investigations. Records shall be maintained by Subrecipient for a period of five (5) years after completion of the project.

2.2 Compliance with Federal Regulations. Subrecipient agrees to comply with the requirements of section 603 of ARPA, regulations adopted by Treasury pursuant to section 603(f) of ARPA, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, including, without limitation, the following:

- (A) 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.
- (B) 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.
- (C) 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.
- (D) Recipient 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.
- (E) Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- (F) New Restrictions on Lobbying, 31 C.F.R. Part 21.
- (G) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

2.3 Compliance with Federal Statutes and Regulations Prohibiting Discrimination. Subrecipient agrees to comply with statutes and regulations prohibiting discrimination applicable to the CSLFRF program including, without limitation, the following:

- (A) 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.
- (B) 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.
- (C) 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.
- (D) 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.
- (E) 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.

2.4 False Statements. Subrecipient understands that making false statements or claims in connection with the CSLFRF program 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.

2.5 Hatch Act. If Subrecipient is a public agency, Subrecipient agrees to comply, as applicable, with the requirements of the Hatch Act (5 U.S.C. section 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.

2.6 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:

- (1) A member of Congress or a representative of a committee of Congress;
- (2) An Inspector General;
- (3) The Government Accountability Office;
- (4) A Treasury employee responsible for contract or grant oversight or management;
- (5) An authorized official of the Department of Justice or other law enforcement agency;
- (6) A court or grand jury; or
- (7) A management official or other employee of Subrecipient, or a subcontractor who has the responsibility to investigate, discover, or address misconduct.

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

2.8 Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees and subcontractors 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.

2.9 Assurances of Compliance with Civil Rights Requirements. The Civil Rights Restoration Act of 1987 provides that the provisions of this assurance apply to the Contract, including, but not limited to, the following:

- (A) Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such

as Executive Order 13166; directives; circulars; policies; memoranda and/or guidance documents.

- (B) Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP)," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, are limited in their English proficiency. Subrecipient understands that the denial of access to persons to its programs, services and activities because of their limited proficiency in English is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964. Accordingly, Subrecipient shall initiate reasonable steps, or comply with Treasury's directives, to ensure meaningful access to its programs, services and activities to LEP persons. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary to ensure effective communication in the Project.
- (C) Subrecipient agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on LEP, please visit <http://www.lep.gov>.
- (D) Subrecipient acknowledges and agrees that compliance with this assurance constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees and assignees for the period in which such assistance is provided.
- (E) Subrecipient agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's subcontractors, successors, transferees and assignees:

The 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 Department of the Treasury 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 extends 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 Department of the Treasury Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement).

- (F) Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the

Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.

- (G) Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. Subrecipient shall comply with information requests, on-site compliance reviews, and reporting requirements.
- (H) Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any accusations of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient must also inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
- (I) Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of discrimination, please so state.
- (J) If Subrecipient makes sub-awards to other agencies or other entities, Subrecipient is responsible for assuring that sub-recipients also comply with Title VI and all of the applicable authorities covered in this assurance.

3. SUBCONTRACTS

Subrecipient will incorporate the same or substantially equivalent requirements as are contained in this Agreement in all subcontracts that utilize any ARPA funds or that support any ARPA funded project covered by this Agreement. When a project utilizes ARPA funds and funds from other sources, all funds are subject to ARPA regulations. Subrecipient, by entering into a subcontract for performance of any portion of its ARPA funded program, is not relieved of its responsibilities to City as set forth in this Agreement.

4. STANDARD OF CONDUCT/CONFLICT OF INTEREST AND LOBBYING

- 4.1 No member, officer or employee of Subrecipient or its designee or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any function or responsibility with respect to the program during that person's tenure or for one year thereafter, may have any interest, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the programs activities assisted under this Agreement.
- 4.2 By entering into this Agreement, Subrecipient certifies that:
- (A) No federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan, or cooperative agreement.
 - (B) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Subrecipient must complete and submit Standard Form- LL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and other federal disclosure forms as requested.
 - (C) Subrecipient will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients certify and disclose accordingly.
- 4.3 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5. FISCAL CONTROL

- 5.1 Subrecipient is responsible for the internal control and monitoring of fiscal and programmatic/operational goals and procedures. Subrecipient will establish such fiscal controls and fund accounting procedures as required by federal regulations, or as may be deemed necessary by the City to assure the proper disbursement of, and accounting for, funds paid to Subrecipient under this Agreement.

Subrecipient must maintain separate accounts within established bookkeeping systems for ARPA funds.

- 5.2 If award exceeds \$50,000 the Subrecipients are subject to Title 2 CFR Part 200 must deposit funds in an account requiring two signatures for disbursement and submit to City specimen signatures for all authorized signatories prior to receipt of funds.
- 5.3 City will pay Subrecipient progress payments at the time and in the manner set forth in Exhibit "B." Payment by City is not to be construed as final in the event that Treasury disallows reimbursement for the Project or any portion thereof. Subrecipient will submit reasonable back-up documentation as specified by City with request for payment.
- 5.4 Subrecipient is liable for all amounts that are determined to be due by Treasury including, but not limited to, disallowed costs that are the result of Subrecipient's or its contractor's conduct under this Agreement.
- 5.5 City will notify Subrecipient in writing regarding any controversy or proceeding between City and Treasury arising from this Agreement. Subrecipient will be permitted to respond regarding the controversy or proceeding.
- 5.6 All financial transactions must be supported by complete and verifiable source documents. Records must provide a clear audit trail.

6. REVERSION OF ASSETS

- 6.1 Funds. Upon expiration of this Agreement, Subrecipient will transfer to City any ARPA funds in Subrecipient's control at the time of expiration of this Agreement.
- 6.2 Equipment. If Subrecipient has used ARPA funds to purchase tangible, nonexpendable, personal property having a useful life of more than one (1) year and an acquisition cost of \$5,000 or more per unit, Subrecipient may use such equipment for the purpose for which it was acquired as long as needed for the program or project described in this Agreement. When no longer needed for the original program or project, the equipment must be returned to the City.
- 6.3 Real Property. If Subrecipient has used ARPA funds to purchase real property, and Subrecipient sells or otherwise disposes of such real property, Subrecipient shall return the ARPA-share of the purchase to City. The ARPA-share shall be computed by applying the percentage of ARPA funds that went toward the cost of the original purchase (and costs of any improvements) multiplied by the fair market value of the property at the time of sale by the Subrecipient.

7. REQUESTS FOR TECHNICAL ASSISTANCE

Subrecipient will refer to the City of San Bernardino Community and Economic Development Department any regulatory or procedural questions regarding operation of its ARPA-funded Services. All formal requests for technical assistance must be submitted in writing. Requests should specify the problem area, particular assistance

being requested and proposed solution if applicable. Informal questions regarding daytoday program operation may be directed to the designated City representative.

8. CONTRACT RESPONSIBILITY FOR MONITORING AND RECORDS

- 8.1 City, designated representatives of City, and other appropriate officials must have access to all personnel records, management information, and fiscal data of Subrecipient and any agency or contractor with whom Subrecipient executes a subcontract necessary to carry out any ARPA-funded Services for monitoring purposes. Subrecipient will respond in a timely manner to all identified corrective actions Subrecipient will submit to City all required reports and monitoring corrective action plans on a timely basis, as delineated by City. Records must be maintained as follows:
- 8.2 Subrecipient agrees to retain all pertinent records under ARPA, including financial records, until advised by City that further retention is unnecessary. Records must be open and available for inspection by auditors and other staff assigned by City during the normal business hours of Subrecipient.

EXHIBIT "D"

INSURANCE

Subrecipient must maintain throughout the duration of the term of the Agreement, liability insurance covering Subrecipient and designating City, including its elected or appointed officials, directors, officers, agents, employees, volunteers, or subrecipients, as additional insured against any and all claims resulting in injury or damage to persons or property (both real and personal) caused by any aspect of Subrecipient's work, in amounts no less than the following and with such deductibles as are ordinary and reasonable in keeping with industry standards. It must be stated in the Additional Insured Endorsement that Subrecipient's insurance policies are primary with respect to any claim related to or as the result of Subrecipient's work. Any insurance, pooled coverage, or self-insurance maintained by City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or Subrecipients must be non-contributory. The Additional Insured Endorsement does not apply to the Professional Liability Insurance.

General Liability:

a.	General Aggregate	\$2,000,000
b.	Products Comp/Op Aggregate	\$2,000,000
c.	Personal & Advertising Injury	\$1,000,000
d.	Each Occurrence	\$1,000,000
e.	Fire Damage (any one fire)	\$ 50,000
f.	Medical Expense (any one person)	\$ 5,000

Workers' Compensation:

a.	Workers' Compensation	Statutory Limits
b.	EL Each Accident	\$1,000,000
c.	EL Disease - Policy Limit	\$1,000,000
d.	EL Disease - Each Employee	\$1,000,000

Automobile Liability

a.	Any vehicle, combined single limit	\$1,000,000
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Subrecipient will provide thirty (30) days advance notice to City before any material change to or any cancellation of coverage. Certificates of insurance and additional insured endorsements must be furnished to City thirty (30) days prior to the effective date of this Agreement. Refusal to submit such certificates constitutes a material breach of this Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement. If proof of insurance required under this Agreement is not delivered as required or if such insurance is canceled and not adequately replaced, City has the right but not the duty to obtain replacement insurance and to charge Subrecipient for any premium due for such coverage. City has the option to deduct any such premium from the sums due to Subrecipient.

Insurance must be placed with insurers that are authorized and admitted to write insurance in California and with a current A.M. Best's rating of A-:VII or better. Acceptance of insurance from a carrier with a rating lower than A-:VII is subject to approval by City's Risk Manager. Subrecipient must immediately advise City of any litigation that may affect these insurance policies.

EXHIBIT “E”**PROCUREMENT CHECKLIST**

The below provides a general checklist of the Procurement Standards (2 CFR §200.317 to §200.327), as applicable, for Subrecipients to review and follow when using ARPA funds to contract with a contractor to carry out the Project. A contractor is defined as an entity that receives a contract and a contract is defined as a legal instrument by which a Subrecipient purchases property or services needed to carry out the Project. As specific questions arise, Subrecipients are encouraged to consult the City as this general checklist is only a guide and for reference only.

Procurement Standards (§200.317-§200.327)	
<p>Documented Procurement Procedures</p> <p>Subrecipient must have and use documented procurement procedures, consistent with state and local laws and regulations and the standards of §200.3.17 to §200.327, for the acquisition of property or services.</p>	<input type="checkbox"/>
<p>General Procurement Standards</p> <p>Subrecipient must:</p> <ul style="list-style-type: none"> • Ensure contractors perform in accordance with the terms, conditions, and specifications of their contract. • Maintain written standards of conduct covering conflicts of interest. • Avoid acquisition of unnecessary, duplicative items. • Consider consolidating, breaking out procurements for a more economical purchase. • Only award contracts to responsible contractors. • Maintain records to detail the history of the procurement. • Be responsible for the settlement of contractual and administrative issues in accordance with sound business judgement and good administrative practices. 	<input type="checkbox"/>
<p>Competition</p> <p>Subrecipient must:</p> <ul style="list-style-type: none"> • Conduct procurements in a manner providing full and open competition, situations considered to be restrictive of competition are listed in §200.319. • Conduct procurements in a manner that prohibits use of statutorily or administratively imposed state, local, or tribal geographical preferences in 	<input type="checkbox"/>

<p>the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference, is prohibited.</p> <ul style="list-style-type: none"> • Have written procedures for procurement transactions that, among other things, incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals, and must not contain features which unduly restrict competition. 	
<p>Solicitations</p> <p>Subrecipient, in compliance with its own local and state laws, must follow the informal procurement methods (micro-purchases and small purchases) and formal procurement methods (sealed bids, proposals, noncompetitive procurement) in §200.320, as applicable. If Subrecipient thresholds are lower, the more restrictive requirement shall govern, notwithstanding the provisions in §200.320.</p> <ul style="list-style-type: none"> • Micro Purchases - Purchases of supplies or services within the micro-purchase threshold (e.g., currently set at purchases of \$10,000 or less, but periodically adjusted for inflation) may be awarded without soliciting competitive quotations if the Subrecipient considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. To the extent practicable, the Subrecipient must distribute micro-purchases equitably among qualified suppliers. • Small Purchases - Purchases of property or services within the simplified acquisition threshold (SAT) (e.g., currently set at purchases of \$250,000 or less) shall not be required to be formally bid. Price quotations must be obtained from an adequate number of qualified sources as determined appropriate by the Subrecipient. • Sealed Bids - Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. This is the preferred method for procuring construction. • Proposals - When the nature of a procurement does not lend itself to formal, sealed bidding, the Subrecipient may solicit competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. • Noncompetitive Procurement - Contracts may be procured through a noncompetitive proposal only when: 	<div data-bbox="1409 1207 1433 1234" style="text-align: center;">□</div>

<ul style="list-style-type: none"> ○ The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold; ○ The item is only available from a single source; ○ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; ○ The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Subrecipient; or ○ Competition is deemed inadequate after the solicitation of a number of sources. 	
<p>Types of Contracts</p> <p>Subrecipient must:</p> <ul style="list-style-type: none"> • Not use a cost plus percentage of cost contract and, only in limited circumstances use a time and materials contract. • Perform a price or cost analysis in connection with every procurement action in excess of Simplified Acquisition Threshold (\$250K), including contract modifications, including making an independent cost estimate prior to receiving bids or proposals. • Negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. • Require, on certain construction projects, bid, performance, and payment bonds in accordance with §200.326. 	<input type="checkbox"/>
<p>Contract Provisions</p> <ul style="list-style-type: none"> • Subrecipient must include in its contract with the selected contractor the twelve (12) contract provisions in Appendix II of 2 CFR Part 200, as applicable. Certain contract provisions will not apply based on the scope of and/or the value of the contract. • Subrecipient must take affirmative steps (and require the same of the contractor) to assure that minority businesses, women's business enterprises and labor surplus firms are used when possible. See §200.321. • As appropriate and to the extent consistent with law, Subrecipient should, to the greatest extent practicable, 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). See §200.322. 	<input type="checkbox"/>