

CITY of ALBUQUERQUE

TWENTY FIFTH COUNCIL

COUNCIL BILL NO. R-22-94 ENACTMENT NO. _____

SPONSORED BY: Brook Bassan by request

1 RESOLUTION
2 APPROVING AND AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS
3 FROM U.S. DEPARTMENT OF TREASURY AND PROVIDING AN
4 APPROPRIATION TO THE PARKS AND RECREATION DEPARTMENT IN
5 FISCAL YEAR 2023.

6 WHEREAS, the City has as one of its goals the creation and/or expansion of
7 outdoor recreation access and economies throughout the state; and

8 WHEREAS, the New Mexico Economic Development Department has
9 established the Outdoor Recreation Trails+ Grant to invest in projects that
10 enhance and protect communities' outdoor recreation opportunities and
11 bolster the outdoor recreation economy in New Mexico; and

12 WHEREAS, U.S Department of Treasury, is responsible for implementing
13 the Outdoor Recreation Trails+ Grant project in New Mexico; and

14 WHEREAS, grant funds in the amount of \$295,000.00 are available for this
15 purpose for fiscal year 2023 from U.S Department of Treasury; and

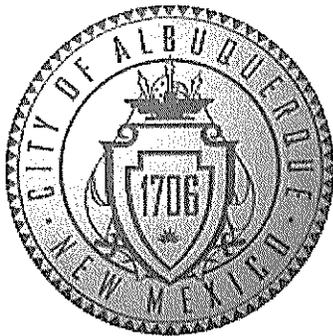
16 WHEREAS, the City of Albuquerque is desirous of accepting the funds.

17 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
18 ALBUQUERQUE:

19 SECTION 1. The Outdoor Recreation Trails+ Grant is approved, and its
20 acceptance and filing with the appropriate official or office is in all respects
21 approved.

22 SECTION 2. That upon approval, funds in the amount of \$295,000.00 are
23 hereby appropriated to the Parks & Recreation Department for the Outdoor
24 Recreation Trails+ Grant in the Operating Grants Fund 305 for Fiscal Year
25 2023.

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Mayor Timothy M. Keller

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

December 08, 2022

TO: Isaac Benton, President, City Council

FROM: Timothy M. Keller, Mayor

A handwritten signature in black ink, appearing to be 'TK', is written over the name 'Timothy M. Keller, Mayor'.

SUBJECT: Approving and Authorizing the Acceptance of grant funds from U.S. Department of Treasury

The attached Resolution is hereby submitted by the Parks and Recreation Department to accept grant funds for the "The Outdoor Recreation Trails+ Grant" from U.S. Department of Treasury. The funds awarded to the City of Albuquerque/ Parks and Recreation Department, Open Space Division total \$295,000.00 for fiscal year 2023 and an additional \$295,000.00 is the City's required Cash Match to invest in conservation-minded shovel-ready projects that are open to the public.

The Outdoor Recreation Trails+ Grant encourages and supports New Mexico nonprofits, tribal, local, and regional governments, and other eligible entities to create and/or expand outdoor recreation access and economies throughout the state.

This resolution is forwarded to the City Council for consideration and action.

FEDERAL AWARDS APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	United States Department of the Treasury
Grant Program	Coronavirus Local Fiscal Recovery Fund
Assistance Listing Number	21.027
Federal Award Number	
Federal Award Date	June 9, 2021
Award End Date	October 31, 2026
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount in Federal Award (this is not the amount in the grant agreement)	\$1,751,542,835.00

**First Amendment to Outdoor Recreation Division
Outdoor Recreation Trails+ Grant**

**CSFRF SUBAWARD
BETWEEN THE NEW MEXICO
ECONOMIC DEVELOPMENT DEPARTMENT
AND**

City of Albuquerque, Parks and Recreation Department

THIS FIRST AMENDMENT to GRANT AGREEMENT is hereby made and entered into this 19 day of **October**, by and between the New Mexico **Economic Development Department**, hereinafter referred to as the State, and **City of Albuquerque, Parks and Recreation Department** hereinafter referred to as “Subrecipient.”

WHEREAS, the U.S. Department of Treasury (hereinafter referred to as “Grantor”) has made federal funds available to the State under the Coronavirus State Fiscal Recovery Fund (CSFRF) Program (Assistance Listing Number (ALN) 21.027);

WHEREAS, Recipients under the CSFRF Program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 that receive a CSFRF award. Subrecipients under the CSFRF Program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the CSFRF award on behalf of the recipient;

WHEREAS, Recipients are accountable to Treasury for oversight of their Subrecipients, including ensuring their subrecipients comply with the CSFRF statute, CSFRF Award Terms and Conditions, Treasury’s Interim Final Rule, and reporting requirements, as applicable; and,

WHEREAS, this agreement addresses the flow of funds from the Grantor above to the State who will then provide the same referenced subaward funds to the Subrecipient, as legally allowed by the relevant law and regulations, for any approved scope of work as further discussed in Section 2 of this agreement;

WHEREAS, the New Mexico Economic Development Department has established the Outdoor Recreation Trails+ Grant to invest in projects that enhance and protect communities' outdoor recreation opportunities. The Outdoor Recreation Trails+ Grant will award grants of up to either

\$99,999 or \$500,000, depending on the Tier of award, to nonprofits, tribal, local, and regional governments, and other eligible entities with the purpose of improving access to outdoor recreation within a community, while simultaneously bolstering the outdoor recreation economy in New Mexico.

WHEREAS, the Outdoor Recreation Trails+ Grant encourages and supports New Mexico nonprofits, tribal, local, and regional governments, and other eligible entities to create and/or expand outdoor recreation access and economies throughout the state.

WHEREAS, the assistance provided by this initiative will enhance and protect communities' outdoor recreation opportunities and grow the outdoor economy as a result. The State has allocated **two hundred and ninety-five thousand dollars (\$295,000.00)** to the Subrecipient.

NOW THEREFORE, the State and the Subrecipient do mutually agree to the following terms and conditions of this agreement:

1. Definitions

- a. **“Agreement Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- b. **“Agreement”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- c. **“Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- d. **“Breach of Agreement”** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against State, or the appointment of a receiver or similar officer for State or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.
- e. **“Budget”** means the budget for the Work described in Exhibit B.
- f. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the legal public holidays.
- g. **“Effective Date”** means the date on which this Agreement is approved and signed by the New Mexico agency, as shown on the Signature for this Agreement.
- h. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- i. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement Agreement, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to an Agreement or payments to an individual that is a beneficiary of a Federal program.
- j. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which is the subject of this Agreement.
- k. **“Goods”** means any movable material acquired, produced, or delivered by State as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by the State in connection with the Services.

- l. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- m. **“Grantee”** means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
- n. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- o. **“Initial Term”** means the time period defined in the agreement.
- p. **“IPRA”** means the Inspection of Public Records Act, a New Mexico state law that provides the public and media access to public information. The law requires open access to almost all public records in state and local government, with few exceptions
- q. **“Matching Funds”** means the funds provided the State as a match required to receive the Grant Funds.
- r. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Subrecipient.
- s. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.
- t. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- u. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

- v. **“Services”** means the services to be performed by Subrecipient as set forth in this Agreement and shall include any services to be rendered by Subrecipient in connection with the Goods.
- w. **“State Confidential Information”** means any and all State Records not subject to disclosure under IPRA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under IPRA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Subrecipient which (i) is subject to disclosure pursuant to IPRA; (ii) is already known to Subrecipient without restrictions at the time of its disclosure to Subrecipient; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Subrecipient to the State; (iv) is disclosed to Subrecipient, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- x. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- y. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under IPRA.
- z. **“Subcontractor”** means third parties, if any, engaged by Subrecipients to aid in performance of the Work.
- aa. **“Tax Information”** means federal and State of New Mexico tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- bb. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- cc. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

- dd. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- ee. Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

2. Scope of Work

The Grantor has provided funds, through its CSFRF Program, to the State who is then providing this same funding to the Subrecipient. Information related to the federal award is attached as Exhibit A. The Subrecipient shall perform the necessary tasks required in order to accomplish the objectives of the Grantor’s Program which have been agreed to by the State. This includes complying with all applicable federal, state or local laws, regulations and administrative policies as they relate to the Subrecipient’s specific approved project including but are not limited to the references above as well as the following:

- a. Subrecipient will comply with 31 CFR Part 35 Subpart A – Coronavirus State and Local Fiscal Recovery Funds.
- b. Subrecipient will comply with Title 2, Subtitle A, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards as well as any specific federal departmental grant requirement in other sections of the CFR.
- c. Subrecipient will adhere to both the Federal Procurement Laws contained in 2 CFR Part 200.317 to 200.326 as well as the State Procurement Laws for Political Subdivisions contained in the New Mexico Procurement Code.
- d. Subrecipient will adhere to the requirements of the Grantor’s CSFRF Program.
- e. Subrecipient will adhere to the Scope of Work and Budget in Exhibit B.
- f. Subrecipient will comply with the Assurances for Non-Construction Programs as outlined in Standard Form 424B (Rev. 7-97) where applicable.
- g. Subrecipient will comply with the Assurances for Construction Programs as outlined in Standard Form 424D (Rev. 7-97) where applicable.
- h. Subrecipient will incorporate, where applicable, the contractual provision requirements outlined in 2 CFR Part 200.326.
- i. Subrecipient will comply, when applicable, with any applicable National Policy Requirements for federal grants which is further discussed in Section 7 of this agreement.
- j. Subrecipient will not pay any contractor who is listed by the federal government as debarred or suspended which is further discussed in Section 7 of this agreement. Subrecipient agrees to alert the State immediately if a contractor working for the Subrecipient becomes debarred or suspended.

- k. Subrecipient will fully cooperate at all times with the State as the project manager who is ultimately accountable to the Grantor for all funds related to this project.

Pursuant to information submitted to the State for inclusion in the Grantor's CSFRF Program, the Subrecipient shall:

- a. Properly procure and complete the project as described in Exhibit B, Scope of Work and Budget.
 - (1) Any and all expenses associated with the project are the sole responsibility of the Subrecipient.
 - (2) The ownership of any property furnished hereunder will be the property of the Subrecipient.
- b. Have the sole responsibility to maintain possession of the said property, maintain the property, repair the property when needed and maintain any applicable insurance amounts.
 - (1) Any future costs related to these requirements remain the sole responsibility of the Subrecipient.

In compliance with the above, the Subrecipient agrees to notify the State and Grantor, in writing, and request the preferred method of disposition for any property or equipment purchased with federal funds if said property or equipment is no longer of use to the Subrecipient. In addition, if an annual inventory is requested by the State, then the Subrecipient will provide prompt access to all inventory records.

3. Term of Agreement

The terms of this agreement shall become effective upon execution of this agreement and shall continue for a period of five (5) years after closeout of the grant program. Final reports must be received on or before **24 months after signing of the grant agreement.**

If this agreement approaches the end of its term, the State, with written notice to the Subrecipient, may unilaterally extend the term for a period of no longer than two months. The provision of the notice shall remain in effect until the end of the extended term, upon the execution of a replacement agreement, or modification of the agreement.

4. Payment Terms of Grant Funding

- a. Maximum Amount

The maximum budget for the scope of work identified in Section 1 above:

\$295,000.00

- b. Payment Procedures

- (1) The State shall pay the Subrecipient in the amounts and in accordance with the schedule and other conditions set forth in Exhibit B.

- (2) Subrecipient shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- (3) The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by the Subrecipient and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Subrecipient shall make all changes necessary to correct that invoice.
- (4) The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

c. Questioned Costs

- (1) Any questioned costs which may occur at any point in this process (including the five (5) year period after grant closeout by the federal Grantor) will be the sole responsibility of the Subrecipient with respect to any activity covered by this agreement.

If this agreement extends beyond the current fiscal year and notwithstanding anything to the contrary and when applicable, both parties acknowledge and agree that pursuant to the applicable state law, this agreement is subject to an annual appropriation dependency requirement to the effect that the renewal of this agreement is contingent upon the appropriation of funds by either party to fulfill any future payment requirements of this agreement. If either party fails to appropriate sufficient monies to provide for any future payment requirements under this agreement, this agreement shall terminate on the last day of the last fiscal year for which funds were appropriated.

5. Reporting, Monitoring, and Review

a. Requirements

The Subrecipient is required to participate in monitoring and review activities necessary to assess the work performed under the Subaward and determine whether the Subrecipient has timely achieved the Scope of Work stated in Exhibit B to this Subaward. The Subrecipient shall submit, a written report specifying progress made for each specified performance measure and standard in this Agreement. The ongoing monitoring of the Subrecipient will reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

b. Risk Assessment

The risk assessment may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight.

c. Monitoring

Monitoring and review activities will be detailed in a Monitoring Plan based on the State's risk assessment of the Subrecipient and will be provided to the Subrecipient. The Monitoring Plan may include, but not be limited to, the Subrecipient's technical progress compared to the intended milestones and deliverables; the Subrecipient's actual

expenditures compared to the approved budget, review of Subrecipient's reimbursement requests including detailed backup documentation, or other subject matter specified by the State.

d. **Litigation Reporting**

If Subrecipient is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Subrecipient's ability to perform its obligations under this Agreement, Subrecipient shall, within ten days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page for this Agreement

e. **Performance and Final Status**

Subrecipient shall submit all financial, performance and other reports required in the 12- and 24-month status updates to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

f. **Violations Reporting**

Subrecipient shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

g. **Inspection**

Subrecipient shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Subrecipient Records during the Record Retention Period. Subrecipient shall make Subrecipient Records available during normal business hours at Subrecipient's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

h. **Final Audit Report**

Subrecipient shall promptly submit to the State a copy of any final audit report of an audit performed on Subrecipient's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Subrecipient or a third party. Additionally, if Subrecipient is required to perform a single audit under 2 CFR 200.501, et seq., then Subrecipient shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

6. Amendments and Assignments

If there is a need to review or revise this agreement, the requesting party shall submit a written amendment to the other party, with the understanding that no amendment to this agreement shall be valid unless it is agreed and signed by both parties. This agreement shall not be assignable by either party without written consent of the other, except for assignment resulting from merger, consolidation, or reorganization of the assigning party.

7. Records, Audits, and Other Grant Compliance Issues

It is understood that this agreement may be utilized as part of the American Rescue Plan Act (Coronavirus State and Local Fiscal Relief Fund – ALN 21.027) and therefore both parties agree to maintain accounts and records, including personnel, property, and financial records, adequately to identify and account for all costs pertaining to this agreement and to ensure full compliance with the requirements of the above program. The Subrecipient will comply with all applicable federal law, regulations, executive orders, grant policies, procedures, and directives. Even though federal funding may be available, the Federal Government is not a party to this agreement and is not subject to any obligations or liabilities to the State, Subrecipient, or any other party pertaining to any matter resulting from the agreement.

a. Work Product Information

- (1) The Subrecipient may receive from the State work product information that the State utilizes. The Subrecipient assumes sole responsibility for verification of the accuracy of all information and for legal compliance with all rules and instructions required herein. The Subrecipient further acknowledges that the State makes and assumes no representations or warranties with regard to the work product information. Work product information may include, but is not limited to, procurement policies, procurement forms, contractor insurance requirements, various standard contracts, specific grant program forms or other relevant documents.
- (2) With respect to the Subrecipient's use of any work product transmitted by or originally created by the State, the Subrecipient acknowledges it is the Subrecipient's decision to act accordingly. The Subrecipient has the option to either adopt such product as the Subrecipient's own or the Subrecipient may utilize the following other options available to the Subrecipient:
 - i. Modify the State's work product appropriate to the Subrecipient's own needs;
 - ii. Create and adopt the Subrecipient's own work product separate from the State's work products; or,
 - iii. Adopt a work product created by other State or Federal agencies when applicable to the Subrecipient's needs.
- (3) If the Subrecipient utilizes any of the State's work products in any way, then the Subrecipient acknowledges that the State makes no representations or warranties with

regard to the same.

b. Audits

For audit purposes, all records will be made available by both parties to any authorized representative of either party and said records will be maintained and retained for five (5) years after closeout of the grant program. If any confidential information is obtained during the course of this agreement, both parties agree not to release that information without the approval of the other party unless instructed otherwise by court order, grantor, auditor, public information request or as required by law.

c. Records

The State and Subrecipient agree that all records shall be made available to either party at no additional charge for such information. The Subrecipient also agrees to provide the State, the Government Accountability Office (GAO), the Treasury's Office of Inspector General (OIG), Pandemic Relief Accountability Committee (PRAC), or any of their authorized representatives access to any books, documents, papers, and records of the Subrecipient which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts, and transcriptions. The Subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed at no additional charge.

In compliance with the Grantor and national policy requirements, including the above referenced federal grant requirements, both parties agree to adhere to the following regulations, where applicable:

(a) **Federally Required Contractual Provisions:**

- (1) **Administrative, Contractual or Legal Remedies** are required in all contracts in excess of the simplified acquisition threshold amount that are funded with federal funds and are addressed in various sections of this agreement;
- (2) **Termination Provision** requires all contracts in excess of \$10,000 to contain a provision for termination of the contract for cause or convenience and this provision is addressed in Section 8 of this agreement;
- (3) For all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, **Equal Employment Opportunity**, including Executive Order 11246 which was further amended by Executive Order 11375, which requires equal opportunity for all persons, without regard to race, color, religion, sex or national origin, employed or seeking employment with government contractors or with contractors performing under federally assisted construction contracts (See Exhibit C);
- (4) For all applicable contracts in excess of \$100,000 that involve the employment of mechanics or laborers, **Contract Work Hours and Safety Standards Act** which prohibits certain unsanitary, hazardous or dangerous working conditions and requires

that wages of every mechanic and laborer to be on the basis of a standard work week of forty hours with any work in excess of forty hours per week to be compensated at a rate of not less than one and one-half times the basic rate of pay (See Exhibit C);

- (5) For all contracts that meet the definition of “funding agreement” under 37 CFR Part 401.2(a) and involve a contract with a small business firm or nonprofit organization regarding the assignment or performance of experimental, developmental or research work must comply with the **Rights to Inventions Made Under a Contract or Agreement** contained in 37 CFR Part 401 (See Exhibit C);
- (6) All contracts, subcontracts and sub-grants in excess of \$150,000 must contain a provision which requires compliance with all applicable standards, orders or regulations issued pursuant to the **Clean Air Act** and the **Federal Water Pollution Control Act** (See Exhibit C);
- (7) **Debarment and Suspension (Executive Orders 12549 and 12689 and 2 CFR Part 180)** which prohibit the contracting with any party listed on the “System for Award Management” (SAM), formerly identified as the “Excluded Parties List System” (EPLS.gov), which identifies all parties that have active exclusions (i.e., suspensions, debarments) imposed by a federal agency (See Exhibit C);
- (8) **Byrd Anti-Lobbying Prohibition (31 U.S.C. 1352)** prohibits the use of federal funds to pay any person or organization for influencing or attempting to influence anyone with any federal contract, grant or other award covered by 31 U.S.C. 1352 and also requires that Contractors that apply or bid for an award exceeding \$100,000 where federal funds are used must file the required certification stating that the parties will not and have not used federal funds to pay any person or organization for influencing or attempting to influence anyone with any federal contract, grant, or other award covered by 31 U.S.C. 1352 (See Exhibit C);
- (9) For all construction contracts in excess of \$2,000 and required by federal grant regulations, the **Davis Bacon Act** which requires payments of wages for laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor and said wage payments will be made at least weekly (See Exhibit D);
- (10) **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment** wherein 2 CFR Part 200.216 prohibits use of federal grant or loan funds to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

- (11) **Domestic Preferences for Procurements** for when federal funds are utilized, and where appropriate and to the extent consistent with other laws and regulations, 2 CFR Part 200.322 allows a federal award to 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); and,
- (12) **Procurement of Recovered Materials** as required by 2 CFR Part 200.323 which requires procurements in excess of \$10,000 to contain the highest percentage of recovered materials practicable while consistent with maintaining a satisfactory level of competition.

(b) **National Policy Requirements:**

- (1) **Civil Rights Act of 1964**, including Title VI, which states that no person shall on the grounds of race, color or national origin shall be excluded from participation in, be refused the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance;
- (2) **Age Discrimination Act of 1975** which prohibits discrimination based on age in programs or activities receiving federal financial assistance;
- (3) **Americans with Disabilities Act of 1990**, with respect to building construction or alteration, prohibits discrimination based on a disability defined as a physical or mental impairment that substantially limits a major life activity;
- (4) **Section 504 of the Rehabilitation Act of 1973**, if specifically required by the federal agency, which prohibits the exclusion of an otherwise qualified individual because of a disability in programs receiving federal financial assistance including program accessibility, accessible new construction and alterations, reasonable accommodations and effective communication with hearing and visually disabled (this requirement may vary with each federal agency);
- (5) For all construction or repair contracts, **Copeland “Anti-Kickback” Act** which requires all contracts and sub-grants for construction or repair to contain a provision that prohibits a contractor or sub-contractor from inducing, by any means, any person employed in the construction, completion or repairs of public work to give up any part of the compensation to which he is otherwise entitled;
- (6) **National Environmental Policy Act and National Historic Preservation Act** which prohibit any activities that will have an adverse impact on the environment and regulate activity on property or structures that are deemed historic;
- (7) **Energy Policy and Conservation Act** which require the contractors to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan;

- (8) **Reporting Provision** requires that all contracts should include a requirement that the Subrecipient assist the State, when applicable, with any awarding agency requirements and regulations pertaining to reporting;
- (9) **Record Retention Provision** requires that any contract executed must include a provision that all required records will be maintained by the contractor/firm for a minimum period of three (3) years after the State formally closes out each federal program (State and Subrecipient grant managers should verify the three (3) year record retention period with each respective grant agency to ensure that a longer period is not required);
- (10) **2013 National Defense Authorization Act (41 United States Code (U.S.C.) 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection)** subjects any subawards and contracts over the federal simplified acquisition threshold to the provisions of the above act regarding rights and remedies for employee whistleblower protections;
- (11) **National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973** which require recipients of federal grants that are acquiring, constructing or repairing property in a special flood hazard area, and with an estimated cost in excess of \$10,000, to purchase flood insurance;
- (12) **Wild and Scenic Rivers Act of 1968** which protects components or potential components of the national wild and scenic rivers system;
- (13) **Resource Conservation and Recovery Act** which requires proper handling and disposal of solid waste;
- (14) **Toxic Substance Control Act** which places restrictions on chemicals that pose unreasonable risks, such as surfaces that could be covered with lead-based paint;
- (15) **Federal Agency Seal(s), Logos, Crests, or Reproductions of Flags or Likeness of Federal Agency Officials** are prohibited from being utilized without specific federal agency pre-approval;
- (16) **False Claims Act and 32 U.S.C. Chapter 38 (Administrative Remedies)** which prohibits the submission of false or fraudulent claims for payment to the federal government identifying administrative remedies for false claims and statements made which the CONTRACTOR herein acknowledges; and,
- (17) **Section 603 Title VI of the Social Security Act** which establishes the Coronavirus State and Local Fiscal Recovery Fund and identifies eligible and ineligible uses for the Fund monies (See Exhibit E).

In compliance with Section 7(a)(7) above, the Subrecipient agrees to verify that all contractors or

subcontractors employed are not parties listed as active exclusions (i.e., suspensions, debarments) on the "System for Award Management" (SAM) for parties debarred, suspended or otherwise excluded from contracting on any projects involving federal funds. Subrecipient agrees to require the contractor to provide immediate notice, but in no case later than three (3) business days, after being notified that the contractor, or any subcontractor, has been added to the SAM or otherwise been debarred from contracting on any projects involving federal funds.

In no event shall the Subrecipient allow any contractor to utilize a subcontractor at any time during the duration of this agreement who has been debarred from contracting on any projects involving federal funds. If the contractor is prohibited in any way from contracting on any projects involving federal funds at any time during the duration of this agreement, then both the Subrecipient and the State must be notified. the State may, at its sole discretion, immediately implement the termination provisions discussed in Section 8 below if the Subrecipient decides to continue with the project using a "debarred" or "active exclusion" contractor or subcontractor.

8. Liability and Indemnity

a. Liability

This agreement is intended for the benefit of the State and the Subrecipient and does not confer any rights upon any other third parties. All rights by and between the State and the Subrecipient are limited to the actions outlined in the applicable local, state and federal laws, regulations and policies.

b. Indemnity

The Subrecipient will indemnify, defend, and hold harmless the State, including the State's employees and agents, from and against any and all claims or liabilities arising from the fault of the Subrecipient, its employees or agents in carrying out the Subrecipient's duties and obligations under the terms of this agreement. This section will survive the termination of this agreement. In the event that either party takes any action to enforce this mutual indemnity provision, the prevailing party shall be entitled to recover reasonable attorney's fees and costs arising as a result thereof.

9. Insurance

Subrecipient shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Subrecipient or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation, or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction Agreements require additional insured coverage for completed operations) required of Subrecipient and Subcontractors.

H. Primacy of Coverage

Coverage required of Subrecipient and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by Subrecipient or the State.

I. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Subrecipient.

J. Subrogation Waiver

All commercial insurance policies secured or maintained by Subrecipient or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Certificates

For each commercial insurance plan provided by Subrecipient under this Agreement, Subrecipient shall provide to the State certificates evidencing Subrecipient's insurance coverage required in this Agreement within seven Business Days following the Effective Date. Subrecipient shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven Business Days following the Effective Date, except that, if Subrecipient's Subcontractor is not in effect as of the Effective Date, Subrecipient shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Subrecipient's execution of the Subcontractor. No later than 15 days before the expiration date of Subrecipient's or any Subcontractor's coverage, Subrecipient shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Subrecipient shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

10. Breach

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §11 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State.

11. Remedies

a. State's Remedies

If Subrecipient is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §10, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Subrecipient's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Subrecipient fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Subrecipient shall continue performance of this Agreement to the extent not terminated, if any.

1. Obligations and Rights

To the extent specified in any termination notice, Subrecipient shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and Subcontractors with third parties. However, Subrecipient shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Subrecipient shall assign to the State all of Subrecipient's rights, title, and interest in and to such terminated orders or Subcontractors. Upon termination, Subrecipient shall take timely, reasonable and necessary action to protect and preserve property in the possession of Subrecipient but in which the State has an interest. At the State's request, Subrecipient shall return materials owned by the State in Subrecipient's possession at the time of any termination. Subrecipient shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

2. Payments

Notwithstanding anything to the contrary, the State shall only pay Subrecipient for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Subrecipient was not in breach or that Subrecipient's action or inaction was excusable.

3. Damages and Withholding

Notwithstanding any other remedial action by the State, Subrecipient shall remain liable to the State for any damages sustained by the State in connection with any breach by Subrecipient, and the State may withhold payment to Subrecipient for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Subrecipient is determined. The State may withhold any amount that may be due Subrecipient as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

1. Suspend Performance

Suspend Subrecipient's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Subrecipient to an adjustment in price or cost or an adjustment in the performance schedule. Subrecipient shall promptly cease performing Work and incurring costs in accordance with the State's directive, and

the State shall not be liable for costs incurred by Subrecipient after the suspension of performance.

2. Withhold Payment

Withhold payment to Subrecipient until Subrecipient corrects its Work.

3. Deny Payment

Deny payment for Work not performed, or that due to Subrecipient's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

4. Removal

Demand immediate removal of any of Subrecipient's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

5. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Subrecipient shall, as approved by the State (i) secure that right to use such Work for the State and Subrecipient; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

b. Subrecipient's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Subrecipient, following the notice and cure period in §10 and the dispute resolution process in §12 shall have all remedies available at law and equity.

12. Termination of Agreement and Dispute Resolution

a. Termination

While both parties agree to negotiate all contractual disputes in good faith, the State reserves the right to terminate this agreement at any time upon written notice of termination or if the Subrecipient has failed to comply with the terms of this agreement, the grant itself or any applicable law and regulation. All questioned costs are the sole responsibility of the Subrecipient.

b. Dispute Resolution

If the parties are unable to independently and satisfactorily resolve any disagreement, then both parties agree that any contractual disagreement will be resolved under the jurisdiction of the New Mexico and the exclusive venue shall be in the City and County of Santa Fe. In the event that court action is necessary then the parties agree that whoever prevails in

the litigation is entitled to reasonable attorney's fees and costs as fixed by the Court.

13. Conflicts of Interest

a. Actual Conflicts of Interest

Subrecipient shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Subrecipient under this Agreement. Such a conflict of interest would arise when a Subrecipient or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

b. Apparent Conflicts of Interest

Subrecipient acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient's obligations under this Agreement.

c. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict has arisen, Subrecipient shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure

to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

14. Notices and Representatives

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered:

- a. by hand with receipt required,
- b. by certified or registered mail to such Party's principal representative at the address set forth below or
- c. as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement

If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. Rights in Work Product and Other Information

- a. Work Product
 - i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Subrecipient hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Subrecipient cannot make any of the assignments required by this section, Subrecipient hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

- ii. Patents

In addition, Subrecipient grants to the State (and to recipients of Work Product distributed

by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Subrecipient that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not Subrecipient is under Agreement with the State at the time, Subrecipient shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Subrecipient assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

b. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Subrecipient shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Subrecipient's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Subrecipient shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

c. Exclusive Property of Subrecipient

Subrecipient retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Subrecipient including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Subrecipient under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Subrecipient Property"). Subrecipient Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. General Provisions

a. Assignment

Subrecipient's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Subrecipient's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

b. Subcontractors

Subrecipient shall not enter into any subgrant or Subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Subrecipient shall submit to the State a copy of each such subgrant or Subcontract upon request by the State. All subgrants and Subcontracts entered into by Subrecipient in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of New Mexico, and shall be subject to all provisions of this Agreement. If the entity with whom Subrecipient enters into a Subcontract or subgrant would also be considered a Subrecipient, then the Subcontract or subgrant entered into by Subrecipient shall also contain provisions permitting both Subrecipient and the State to perform all monitoring of that Subcontract in accordance with the Uniform Guidance.

c. **Binding Effect**

Except as otherwise provided, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

d. **Authority**

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

e. **Captions and References**

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

f. **Counterparts**

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

g. **Entire Understanding**

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

h. **Digital Signatures**

If any signatory signs this agreement using a digital signature in accordance with the State, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

i. **Modification**

Except as otherwise provided in this Agreement, any modification to this Agreement shall only

be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable New Mexico law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the State.

j. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

k. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Subrecipient's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

l. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

m. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

n. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in § 17.A, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

o. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

p. Standard and Manner of Performance

Subrecipient shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Subrecipient's industry, trade, or profession.

q. Licenses, Permits, and Other Authorizations

Subrecipient shall secure, prior to the Effective Date, and maintain at all times during the term

of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

r. **Compliance with State and Federal Law, Regulations, and Executive Orders**

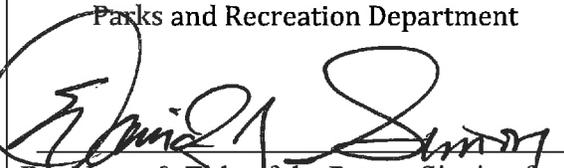
Subrecipient shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Grant.

17. Severability, Entire Agreement and Captions

This agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. If any provision of this agreement is held invalid, void or unenforceable under any law or regulation or by a court of competent jurisdiction, such provision will be deemed amended in a manner which renders it valid, or if it cannot be so amended, it will be deemed to be deleted. Such amendment or deletion will not affect the validity of any other provision of this agreement. This agreement, any CSLRF Grant Program documentation, any attached documents, and any referenced documents represent the entire agreement between the State and the Subrecipient and supersede all prior negotiations, representations or agreements, either written or oral. In the event of a conflict between this agreement and other documents, the terms of this agreement shall control.

Each paragraph of this agreement has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation.

IN WITNESS WHEREOF, the Grantor and the Subrecipient do hereby execute this Agreement as of the date of signature by the Grantor below.

<p style="text-align: center;">Subrecipient</p> <p>Legal Name of the Subrecipient <u>David J. Simon</u> City of Albuquerque, Parks and Recreation Department</p> <p> By: Name & Title of the Person Signing for the Agency <u>Director</u></p> <p>Date: <u>10/21/22</u></p>	<p style="text-align: center;">The State of New Mexico</p> <p>Economic Development Department Alicia J. Keyes Cabinet Secretary Or Designee</p> <p>_____ By: Alicia J. Keyes, Cabinet Secretary, or designee</p> <p>Date: _____</p>
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FEDERAL AWARD INFORMATION

In accordance with the Code of Federal Regulations (CFR), 2 CFR Section 200.331 requires that the following information be provided to any Subrecipient of a federal award:

Federal Award Identification: Coronavirus State and Local Fiscal Recovery Funds

Subrecipient Name: City of Albuquerque, Parks and Recreation Department

Federal Award Identification Number: Coronavirus State and Local Fiscal Recovery Funds

Subaward Period of Performance (Start and End Date): Effective Date of this Agreement and October 31, 2026

Amount of Federal Funds Obligated to Subrecipient: \$295,000.00

Federal Award Project Description (in accordance with Federal Funding Accountability and Transparency Act (FFATA): Coronavirus State and Local Fiscal Recovery Funds

Name of Federal Awarding Agency: U.S. Department of the Treasury

Name of Pass-Through Entity and Contact Information: [_____]

Assistance Listing Number (ALN): 21.027

SCOPE OF WORK AND BUDGET

ARTICLE I – SCOPE OF WORK

- A. The Subrecipient agrees that it will implement, in all respects, the activities outlined in the Subrecipient’s proposal, as outlined in the Submittable grant application, as approved and awarded by the State. The Subrecipient shall provide all the necessary qualified personnel, materials, and facilities to implement the activities described herein, other than those acquired with funds from this grant.
- B. The Subrecipient agrees to make no material change in the Project Description herein described without first submitting a written request to the State and obtaining the State’s written approval of the proposed change.
- C. The Subrecipient agrees that funds distributed under this Agreement shall not be used for purposes other than those specified in the Submittable grant application. Any funds found to be expended for non-permitted purposes shall be repaid to the State. Unauthorized use of grant funds may also subject the Subrecipient to penalties as permitted by state or federal law.
- D. The Subrecipient agrees to provide two status reports: The first 12 months after the start date of the grant and the second at the end of the grant cycle, or 24 months after the start of the grant, as determined by the State. The final report is due within thirty (30) days of **24 months after signing of this grant agreement.**
- E. The Subrecipient agrees to accommodate in-person site visits and phone calls from the State as part of regular status updates throughout the length of this grant agreement.

Significant Changes to Scope of Work

The Subrecipient is required to notify and seek written approval of the State in advance of any proposed changes to the scope of work under this Subaward (i.e., significant changes to the statement of project objectives or the schedule of technical milestones and deliverables). Such changes may require the State to re-evaluate the eligibility of the work under this Subaward.

ARTICLE II- LENGTH OF AGREEMENT

- A. This Agreement shall not become effective until approved by the Department of Finance and Administration, and shall terminate on or before **24 months after signing of the grant agreement.**
- B. In the event that, due to unforeseen circumstances, it becomes apparent that the work under this Grant Agreement cannot be brought to full completion within the

time period set forth in Paragraph A of this Article II, the Subrecipient shall notify the State in writing at least thirty (30) days prior to the termination date of this Agreement. Subrecipient and the State shall review the work accomplished and shall determine whether to amend this Grant Agreement to provide additional time for completion.

ARTICLE III – PROJECT DELIVERABLES

A. **Due Date for Subrecipient to Sign/Return Grant Agreement Copies** –The Subrecipient will receive a copy of grant agreement electronically shall be required to sign and return and electronic copy to the State. Failure by the State to sign and return the grant agreement copies by the required due date may result in forfeiture of the grant award.

B. **Due Date for Subrecipient to Submit Invoice for Payment to State** The State will notify the Subrecipient when the grant agreement has been fully executed which shall not be unreasonably delayed. The funds must be expended as outlined in the grant application. Upon notification by State that any required deliverables have been accepted, Subrecipient may request payment for the grant award by submitting an invoice for advance payment. Failure by the Subrecipient to submit the invoice by the required due date may result in forfeiture of the grant award.

C. **Status Updates**

- The Subrecipient will provide the State with two status updates – one at the halfway point and at the end of the grant agreement. The State will provide an online template for these reports in the form of a survey. These updates will include information about progress on the milestones and other information as requested.
- The Subrecipient is expected to accommodate in-person site visits and phone calls by the State throughout the length of the grant.

D. **Final Report**

- Upon completion of the Scope of Work, Applicant must submit a final report to the State. Final reports must be received on or before **24 months after signing of the grant agreement**. A template for this report and specifics about the information to be included will be sent to all subrecipients electronically. Failure to submit this report by the requested deadline may make the Subrecipient ineligible for future funding from this program.
- Subrecipient will provide State with documentation to support the costs and outcomes identified in the scope of work.

E. If deliverables include the creation of jobs; Subrecipient shall provide the State with a copy of all information reported to the New Mexico Department of Workforce Solutions which proves such job creation.

ARTICLE IV – CONSIDERATION AND METHOD OF PAYMENT

- A. In consideration of the Subrecipient's award, 100 percent of the total awarded funds will be paid upon the start date of the grant. The State shall pay to the Subrecipient a sum not to exceed **two hundred and ninety-five thousand dollars (\$295,000.00)**. The funds are to be expended in accordance with the budget breakdown as specified in the Submittable grant application. It is understood and agreed that the Subrecipient's expenditure of these monies shall not deviate materially from the line items of said budget without the prior written approval of the State.

- B. It is understood and agreed that should any portion of the funds approved and paid hereunder by the State to the Subrecipient for the purpose designated herein that remain unexpended after all conditions of this Agreement have been satisfied shall revert to the State for disposition.

FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of New Mexico is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the CSFRF statute, CSFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of New Mexico agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Entity" means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.

EXHIBIT C

- 2.1.4. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov.
- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the state identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the New Mexico State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.

- 2.1.15. "System for Award Management (SAM)" means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. "Total Compensation" means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.16. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.18. "Unique Entity ID Number" means the twelve-character alphanumeric ID assigned to an entity by SAM.gov to uniquely identify a business entity. Information on UEs can be found at: sam.gov/content/duns-uei

3. COMPLIANCE.

- 3.1. Subrecipient shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of New Mexico, at its discretion, may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3.2. Per US Treasury Final Award requirements, State programs or services must not include terms or conditions that undermine efforts to stop COVID-19 or discourage compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY IDENTIFIER (UEI) REQUIREMENTS.

4.1. SAM. Subrecipient shall maintain the currency of its information in SAM until the Subrecipient submits the final financial report required under the Award or receives final payment, whichever is later. Subrecipient shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

4.2. UEI. Subrecipient shall provide its UEI number to its State, and shall update Subrecipient's information in SAM at least annually after the initial registration, and more frequently if required by changes in Subrecipient's information.

5. TOTAL COMPENSATION.

5.1. Subrecipient shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and

5.1.2. In the preceding fiscal year, Subrecipient received:

5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

6.1. Subrecipient shall report data elements to SAM and to the State as required in this Exhibit. No direct payment shall be made to Subrecipient for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Subrecipient's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above CSFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by the State as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Subrecipient shall report as set forth below.
- 8.1.1. Subrecipient shall use the CSFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit F to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the CSFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health**All Public Health Projects**

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer

- b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

- a) Description of project structure and objectives
- b) Description of project’s response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan *(not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36)*
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served
- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity**Payroll for Public Health and Safety Employees (EC 3.1)**

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay**All Premium Pay Projects**

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county's average annual wage
- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects**All Infrastructure Projects**

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report
 - ii. Project labor agreement certification or project workforce continuity plan
 - iii. Prioritization of local hires
 - iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.
 - iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with

access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to the State no later than five (5) days after the end of the month following the month in which the Subaward was made.

- 8.1.2.1. Subrecipient UEI Number;
- 8.1.2.2. Subrecipient UEI Number if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization UEI Number;
- 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.

8.1.3. To Prime Recipient. A Subrecipient shall report to its State, the following data elements:

- 8.1.3.1. Subrecipient's UEI Number as registered in SAM.
- 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
- 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and

- Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
- 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
 - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
 - 8.1.3.7. For infrastructure projects (EC 5) or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data).
 - 8.1.3.7.1. For projects over \$10 million:
 - 8.1.3.7.1.1. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the

civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

8.1.3.7.1.2. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.

8.1.3.7.1.3. Whether the project prioritizes local hires.

8.1.3.7.1.4. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and the applicable State agency. The State of New Mexico may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit G – CSFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). 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 Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, 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.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the State, Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
- 12.1.1. [Applicable to federally assisted construction Agreements.] **Equal Employment Opportunity**. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall 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 Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] **Davis-Bacon Act**. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). See Exhibit E.

- 12.1.3. **Rights to Inventions Made Under a grant or agreement.** If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement 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 Prime 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, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. **Clean Air Act** (42 U.S.C. 7401-7671q.) and the **Federal Water Pollution Control Act** (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees 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).
- 12.1.5. **Debarment and Suspension** (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in 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.
- 12.1.6. **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 Agreement, 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.
- 12.1.7. **Never Agreement with the enemy** (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Agreement with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

12.1.8. **Prohibition on certain telecommunications and video surveillance services or equipment** (2 CFR 200.216). The State is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. **Title VI of the Civil Rights Act**. The Subgrantee, Contractor, Subcontractor, 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 Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (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 part of this Agreement or agreement.

13. CERTIFICATIONS.

13.1. **Subrecipient Certification.** Subrecipient shall sign a "State of New Mexico Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit E and submit to State Agency with signed grant agreement.

13.2. Unless prohibited by Federal statutes or regulations, the State may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Subrecipient with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

EVENT OF DEFAULT AND TERMINATION.

14.3. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of New Mexico may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of New Mexico under the Grant, at law or in equity.

14.4. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:

EXHIBIT C

- 14.4.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
- 14.4.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- 14.4.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 14.4.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 14.4.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(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), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of New Mexico has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the Legislature and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name: City of Albuquerque, Parks and Recreation Department

Authorized Representative: DAVID J. SIMON

Title: DIRECTOR, PARKS + RECREATION DEPT.

Signature: 

**Agreement with Subrecipient of Federal Recovery Funds
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 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - 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 subaward is shown on page one of this Agreement. Subrecipient may use funds to cover eligible costs incurred, as set forth in Treasury's implementing regulations, during this period of performance.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and State Agency. The State will provide notice of such additional reporting requirements via Exhibit G – Reporting Modification Form.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), 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. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and State agency.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.

EXHIBIT D

8. Conflicts of Interest. The State of New Mexico 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 Contractors must disclose in writing to the Agency 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. The Agency shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.
 - a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(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 Government wide 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 (Agreements and Subcontractors 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. Government wide 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;
 - 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 602 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 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.

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 Agreements, 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 SLFRF0126 awarded to the State of New Mexico by the U.S. Department of the Treasury."
14. Debts Owed the Federal Government.
 - a. Any funds paid to the Subrecipient (1) in excess of the amount to which the 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 sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed to the federal government must be paid promptly by 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 Agreement, or Subcontractor 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 Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) 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 Agreement 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.
10. 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.

**ASSURANCES OF COMPLIANCE
WITH CIVIL RIGHTS REQUIREMENTS**

**ASSURANCES OF COMPLIANCE
WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. 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 financial assistance, 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.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. 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 Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts 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 taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

1. Subrecipient acknowledges and agrees that compliance with the assurances 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.
2. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients 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 Agreement (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 Agreement or agreement.

1. 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.
2. 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. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
3. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints 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 also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

EXHIBIT D

4. 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, the 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.
5. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

**DAVIS-BACON ACT REQUIREMENTS
(If Applicable)**

Overview

Section 1606 of the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009) (the “Recovery Act”), requires grant award recipients, subrecipients, contractors, and subcontractors to comply with the wage requirements of the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) and related acts, stating:

Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

Scope of the Davis-Bacon Act The Davis-Bacon Act prevailing wage requirements apply to laborers and mechanics employed under contracts or subcontracts in excess of \$2,000 for construction, alteration, or repair activities (including but not limited to painting and decorating) that are funded, in whole or in part, under BTOP grant awards. In general:

- Laborers and mechanics – Are workers whose duties are manual or physical in nature, including apprentices, trainees and helpers, but do not include workers whose duties are primarily managerial, administrative, executive, or clerical. See 29 C.F.R. section 5.2(m).
- The \$2,000 threshold – Pertains to the amount of the prime construction contract, not to the amount of individual subcontracts. Accordingly, if the prime construction contract exceeds \$2,000, all construction work on the project (including subcontracts) is covered by the Davis-Bacon Act. See 29 C.F.R. section 5.5(a)(6).
- Construction, alteration, or repair activities – Are those occurring at the “site of the work” that involve the alteration, remodeling, or installation of items fabricated off-site; painting and decorating; manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work; and, in certain cases, transportation between the site of the work and other points. See 29 C.F.R. section 5.2(j).

- **Site of the work** – Is the physical place or places where the building or work called for in the contract will remain, and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project, and includes job headquarters, tool yards, batch plants, borrow pits, etc., if they are dedicated exclusively, or nearly so, to performance of the contract or project, and are adjacent or virtually adjacent to the site of the work. The site of the work does not include permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continued operation are determined wholly without regard to a particular Federal or Federally assisted contract or project. See 29 C.F.R. section 5.2(l).
- **Application to Governmental Agencies** - Governmental agencies, such as states or their political subdivisions, are not subject to the Davis Bacon Act requirements when construction work is being performed by their own employees on a “force account” basis. See 29 C.F.R. section 5.2(h).

Davis-Bacon Act prevailing wage requirements are likely to apply to construction and related activities undertaken in connection with Infrastructure Round 1 and Comprehensive Community Infrastructure (CCI) Round 2 projects. In many cases, Davis-Bacon Act prevailing wage requirements will also apply to activities under BTOP grants for Sustainable Broadband Adoption (SBA) and Public Computer Centers (PCC), when construction and related activities (including minor renovation of facilities) can be segregated from the other work contemplated by the grant. See 29 C.F.R. section 4.116; F.A.R. section 22.402(b).

Davis-Bacon Act Requirements

Required contract provisions (appearing at 29 C.F.R. section 5.5) and the applicable wage determination(s) for the activities contemplated by a construction project must be included in any contract or subcontract to which the Davis-Bacon Act applies providing, among other items, that:

- Laborers and mechanics must be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) at least once a week;
- No paycheck deductions or rebates are permitted, except as permitted under Department of Labor (DOL) regulations (29 C.F.R. sections 3.5-3.6);
- Wage and fringe benefit rates must be no less than those contained in DOL wage determination for the labor classification for the work actually performed.

The recipient is responsible for ensuring that the required contract provisions appear in all contracts and subcontracts entered into by recipients, subrecipients, contractors, and subcontractors for construction, alteration and repair activities covered by the Davis-Bacon Act and related acts. Applicable wage determinations included in the contract must be verified by the recipient within 10 days of the contract date.

In cases where state wage rates (determined under state statutes often called “Mini-Davis-Bacon Acts”) are higher than the Federal wage rates, the state wage rates take precedence and should be included in contracts in lieu of the lower, Federal wage rates. In cases of construction projects on tribal lands, the recipient should contact its assigned Federal Program Officer (FPO) for guidance on the interplay among the Davis-Bacon Act, state Mini-Davis-Bacon acts, and the Tribal Employment Rights Ordinance (TERO).

Contracts for amounts over \$100,000 that are covered by the Davis-Bacon Act must include additional standard clauses (also appearing in 29 C.F.R. section 5.5) providing, among other things, that overtime for laborers and mechanics must be paid at a rate 1.5 times the basic rate of pay for time worked in excess of 40 hours per week.

In addition, the DOL Davis-Bacon poster (WH-1321) must be prominently posted at the site of the work. Refer to: (www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf 1321).

Davis-Bacon Wage Rate Determinations

DOL conducts statewide surveys seeking payment data on wage and fringe benefit rates from construction contractors and other interested parties, such as labor unions. Wage determinations are issued by locality, typically on a county-by-county basis. Davis-Bacon Act wage determinations are published on DOL’s Wage Determinations OnLine (WDOL) website accessible at: www.wdol.gov. The Davis-Bacon Act prevailing wages are determined by DOL based on wages paid to various classes of laborers and mechanics employed on specific types of construction projects in an area.

If DOL has not published a wage determination for work that is needed to complete a BTOP construction project, the recipient may seek a Conformance. The recipient must submit a Conformance request using Standard Form (SF) 1444. Please go to www.wdol.gov/library.aspx to obtain a copy of the form and instructions.

To complete the form, the recipient must describe the work to be done (identified with a classification that is used in the subject area in the construction industry) and propose a wage rate that bears a reasonable relationship to existing wage determinations. Typically, the rate must not

be less than the wage determination for an unskilled laborer and, for a skilled craft, must be at least equal to the lowest wage determination for any other skilled craft.

Infrastructure and CCI recipients should submit the completed SF-1444 through Grants Online as an "Other Action Request." The SF1444 will be routed to the National Oceanic and Atmospheric Administration (NOAA) Grants Officer and transmitted to the DOL Wage and Hour Division for review and approval. The Wage and Hour Division has committed to act on Conformance requests within 30 days.

SBA and PCC recipients should submit completed SF-1444 Conformance requests through the Post-Award Monitoring (PAM) System. To do so, the recipient should create a report package of the type "POR: PAM Other Request." After filling out and attaching the Request Template, recipient should attach the completed SF-1444 form using the "Add File" button. The SF-1444 will be routed to the National Institute of Standards and Technology (NIST) Grants Officer and transmitted to the DOL Wage and Hour Division for review and approval. The Wage and Hour Division has committed to act on Conformance requests within 30 days.

Recordkeeping and Monitoring Obligations

Recipients, subrecipients, contractors, and subcontractors must prepare weekly certified payroll documentation using Form WH347 (available at: www.dol.gov/whd/forms/wh347.pdf), properly completed for laborers and mechanics performing activities covered by the Davis-Bacon Act requirements of the Recovery Act. Subrecipients, contractors, and subcontractors must submit this information to the BTOP grant award recipient on a weekly basis within seven (7) days of the regular payment date of the subrecipient's, contractor's or subcontractor's payroll period.

A recipient must review the weekly certified payroll documentation it receives from its subrecipients, contractors and subcontractors on an ongoing basis. See 29 C.F.R. sections 3.3-3.4. If a subrecipient receives the original payroll documents, the subrecipient should review these documents and forward the original documents to the recipient on a weekly basis within the time period described above.

The recipient must maintain in its files the original Davis-Bacon Act payroll records it prepares for itself, as well as those prepared by subrecipients, contractors, and subcontractors. The recipient is not required to submit any of the payroll documents to the BTOP Grants Office unless the assigned Grants Officer makes a request for such records. The payroll records must be maintained so as to be easily accessed by BTOP Grants Officers and by other duly authorized officials. The recipient must retain these records as provided in the Department of Commerce (DOC) Uniform Administrative Requirements for Grants and Cooperative Agreements, 15 C.F.R. section 14.53 or

24.42, as applicable, generally for the later of three years after closeout of the award, or until any litigation, claim, or audit is resolved.

Enforcement and Penalties

Violation of the requirements of Section 1606 of the Recovery Act and the Davis-Bacon Act and related acts is a serious offense. Compliance is subject to audit during OMB Circular A-133 audits (including program-specific audits) of BTOP grant recipients and subrecipients, as well as audits and investigations by the DOC Office of Inspector General, the Government Accountability Office (GAO), the DOL Wage and Hour Division, and other duly authorized officials. A violation of the Davis-Bacon Act wage requirements may lead NTIA to impose appropriate enforcement action in connection with a BTOP grant award, up to and including suspension or termination of the award. In addition, contracting parties are subject to payment of back wages, and suspension or debarment from future contracts for a period of up to three years. Monetary damages may also apply. Falsification of certified payroll records or the required kickback of wages may subject a violator to civil or criminal prosecution, the penalty for which may include fines and/or imprisonment.

ELIGIBLE AND RESTRICTED USES OF CSFRF FUNDS

As described in the CSFRF statute and summarized above, there are four enumerated eligible uses of CSFRF award funds. As a recipient of an award under the CSFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility and must monitor use of CSFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury's Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the CSFRF program, including some helpful definitions. For example, Treasury's Interim Final Rule establishes:

- A framework for determining whether a project “responds to” a “negative economic impact” caused by the COVID-19 public health emergency;
- Definitions of “eligible employers”, “essential work,” “eligible workers”, and “premium pay” for cases where premium pay is an eligible use;
- A definition of “general revenue” and a formula for calculating revenue lost due to the COVID-19 public health emergency;
- A framework for eligible water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds; and,
- A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

Treasury's Interim Final Rule also provides more information on four important restrictions on use of CSFRF award funds: recipients may not deposit CSFRF funds into a pension fund; recipients that are States or territories may not use CSFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative interpretation; and, recipients may not use CSFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of CSFRF funds outside the scope of eligible uses, including that recipients generally may not use CSFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a “rainy day” fund. Recipients should refer to Treasury's Interim Final Rule for more information on these restrictions.

