

AMENDED AND RESTATED CONTRACT**City of Flagstaff – Flagstaff Arts Council****ARTS, SCIENCE, AND CULTURAL SERVICES****Contract No. 2017-18**

This Amended and Restated Contract for the Purchase of Materials/Services Arts, Science, and Cultural Services is made and entered into this 18th day of June, 2024, by and between the City of Flagstaff, a political subdivision of the State of Arizona (“City”), and the Flagstaff Arts Council, an Arizona nonprofit corporation.

WHEREAS, the parties entered into Contract No. 2017-18 dated July 1, 2017, which was amended by the First Amendment dated June 1, 2022, and the Second Amendment dated December 19, 2023; and

WHEREAS, the parties desire to enter into this Amended and Restated Contract (a Third Amendment) to incorporate all contract provisions applicable to the final renewal term.

NOW, THEREFORE, the parties agree as follows:

1. Scope of Work: Contractor shall provide the materials and/or services described as follows:

Arts, Science, and Cultural Services

in City Fiscal Year 2024-2025 and as more specifically described in the scope of work attached hereto as Exhibit A.

2. Compensation: In consideration for the Contractor’s satisfactory performance, City shall pay Contractor the compensation in an amount not to exceed \$875,626.00, to be applied as follows:

Local Arts, Culture, and Science Agency:	\$175,575
Grants to arts, culture, and science programs:	\$500,000
Administration of grants:	\$ 75,000
Administration of ArtX:	\$ 50,000
ARPA grants to arts, culture, and science programs	\$ 75,051*
Administration of ARPA:	\$0**

*Approximate remaining balance of the \$150,000 in federal American Rescue Plan Act (“ARPA”) funding allocated under the Second Amendment.

** Contractor has expended the \$22,000 allocated under the Second Amendment.

Any price adjustment must be approved in writing and approved by the parties. The City Manager or his designee (the Purchasing Director) may approve a price decrease or a price increase if the amount is less than \$50,000; otherwise, City Council approval is required.

3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B, are hereby incorporated into this Contract by reference.

4. Insurance: Contractor shall meet insurance requirements of the City, set forth in Exhibit C.
5. Contract Term: The Contract term commenced on July 1, 2017, and is hereby renewed for a final one-year term through June 30, 2025.
6. Acknowledgement. The parties acknowledge that this Amended and Restated Contract reflects the complete agreement between the parties for City Fiscal Year 2024-2025 (July 1, 2024 through June 30, 2025).
7. Notice. Any formal notice required under this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Grants & Contracts
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001
pbrown@flagaffaz.gov

To Contractor:

Executive Director
Flagstaff Arts Council
22300 N. Fort Valley Road
Flagstaff, Arizona 86001

With a copy to:

Dave McIntire
Community Investment Director
211 W. Aspen Avenue
Flagstaff, Arizona 86001
dmcintire@flagstaffaz.gov

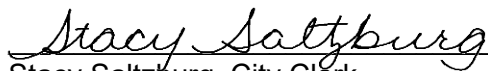
8. Authority. Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

CITY OF FLAGSTAFF



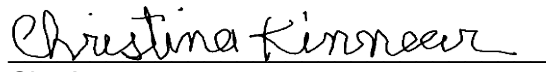
Greg Clifton, City Manager
Greg Clifton signed on 6/27/2024 11:15:05 AM

Attest by:



Stacy Saltzburg, City Clerk
Stacy Saltzburg signed on 6/27/2024 11:25:16 AM

Approved as to form by:



Christina Kinnear, City Attorney
Christina Kinnear signed on 6/24/2024 9:48:56 AM

FLAGSTAFF ARTS COUNCIL



Julie Comnick, Interim Executive Director

Attachments:

Exhibit A Scope of Work, with Attachment A

Exhibit B Standard Terms and Conditions

Exhibit C Insurance Requirements

Exhibit D First Amendment to the Scope of Work (ARPA)

Exhibit E City of Flagstaff Special Terms and Conditions (ARPA)

Exhibit F to the First Amendment: Payment Request (ARPA)

Exhibit G to the First Amendment: Performance Report (ARPA)

Exhibit H to the First Amendment: Grant Provisions (ARPA)

EXHIBIT A
SCOPE OF WORK

Part 1: Local Arts, Culture, and Science Agency

- I. To serve as the coordinating agency for arts, culture, and science endeavors in the Flagstaff area including long-range planning, leadership, and promotional activities, including:
 - A. Establishing and maintaining alignment with community, state, and federal plans and initiatives, including but not limited to The Arizona Arts Education Plan, and long-range plans of the Arizona Commission on the Arts, the National Endowment for the Arts, and Alliance for the Second Century member organizations.
 - B. Developing and maintaining effective partnerships with organizations, institutions, businesses, and individuals.
 - C. Providing general and technical support for individuals, programs, activities, and organizations.
 - D. Preserving and utilizing the community's uniquely diverse existing expertise and talent.
- II. To expand the role of arts, culture, and sciences within the community and Flagstaff as a center of arts, culture, and sciences.
- III. To increase the participation opportunities for residents and to stimulate public and private support for arts, culture, and science endeavors.

Further detail regarding the Contractor's responsibilities related to its work as the coordinating agency is included in the Attachment A to this Exhibit and incorporated by reference into this Contract.

Part 2: Administration of Grants (BBB Funds)

- I. To grant City Council-allocated Bed, Board and Beverage Tax revenues to local source providers as follows:
 - A. The Contractor shall appoint a review committee composed of Flagstaff metropolitan area residents (from within Flagstaff Metropolitan Planning Organization boundaries), and one member appointed by the City Council, which shall:
 1. Review each funding request programmatically, financially, and administratively, using a proposal ranking system and taking into account the availability of alternative funding, the availability of similar services, and demonstrable public benefits from the applicant's proposal.
 2. Make funding recommendations that shall be approved by the vendor's Board of Directors prior to disbursement.
 - B. The Contractor shall provide full administration of the grant program(s), including;
 1. Disbursement of approved allocations and other administration of all funds covered by the agreement.
 2. Notifying organizations of reporting requirements and payment schedules.

3. Monitoring funded programs and finances.
- C. Contractor shall provide the following deliverables to the City:
1. Request for Proposals document, prior to release for distribution.
 2. Proposed Service Agreement text.
 3. Rating or evaluation form used in scoring applicant proposals.
 4. Insurance certificate for each funded organization, with the City named as "also insured."
 5. Verbal presentation to the City Council and in a written Annual Report, each including a summary of all funding allocations (organizations, project description, amounts requested, amounts awarded, and other pertinent information), justification for all recommendations, and the status of all funded programs.
- D. City Council allocation of funds:
1. The City Council allocation of funds for the Arts & Science Grant Program is determined annually by the City Council as a part of the City's budget process.
 2. As a part of the City's annual budget process, the City Council may allocate funding for additional grant programs to be administered by the vendor.



May 6, 2024

Flagstaff Arts Council dba Creative Flagstaff

Memorandum

To: Jana Weldon and David McIntire, City of Flagstaff

From: Julie Comnick, Interim Executive Director, Creative Flagstaff

CF/City of Flagstaff Contract: Scope of Work Addendum

Reflecting focus of scope change of additional \$125,000, and additional \$50,000 ARTx

Creative Flagstaff continues the original scope serving as the coordinating agency for arts, culture, and science endeavors in the Flagstaff area. The following addendum outlines how the organization has evolved since the inception of the 2017 contract, and how increased funding will be directed to ongoing and new initiatives:

Coconino Center for the Arts (CCA)

- **Exhibitions:** Enhanced and expanded exhibitions and programming. CCA will expand offerings by producing 4-5 unique exhibitions in the Main Gallery and 6-8 unique exhibitions in the Project Gallery and satellite venues annually. CCA's 3-year exhibition calendar projects a balanced rotation including solo, group, and juried exhibitions by local, national, and international artists, with attention to diversity of presenters and audience. Exhibitions are selected by the CCA Exhibitions Selection Committee, a subcommittee of the CCA Advisory Board. The CCA website includes a platform for artist rolling submissions for [exhibition proposals](#) and selected juried exhibitions.
- **Presenting Artist Honoraria:** CCA is committed to supporting its presenting artists. Beginning in FY2025, we will offer base standard honoraria ([W.A.G.E standards](#)) for exhibiting artists to help offset artist shipping and travel expenses directly associated with the exhibition relative to the scale of the presentation.
- **Programming:** A robust calendar of exhibition programming will accompany each exhibition with guest experts and educators expanding on the exhibition content through lectures, panel discussions, and art workshops. All presenters will be offered an honorarium for their services.

- **Theater Concerts, Performances & Presentations:** CCA will serve as the booking agent for many concerts and performances, and significantly increase its offerings to the community. For FY2025 we are on track to host 50+ unique performances with the possibility of increased offerings within reasonable staffing capacity. The new [Emerging Artist Series](#) (piloted in 2024) will present paid opportunities to local performers. The Theater Programming subcommittee of the CCA Advisory Board assists in the selection of performances with attention to diversity of presenters and audience.
- **Community Art Markets:** CCA will evolve the annual Winter Artisan Market into two artisan markets next year: a community artisan market in fall 2024 and an Indigenous artisan market in spring 2025. In the event of space availability, we are open to hosting additional external markets in addition to the markets we produce in-house.
- **CCA 40th Anniversary:** Celebrating a milestone, we are planning a weekend celebratory event [September 6-8](#) including a curated fundraiser dinner within the gallery exhibition followed by a weekend of local music at CCA.

Arts Leadership

- **Professional Development Opportunities:** Increased allocation of funding for artist and non-profit professional development opportunities. Recent offerings through CCA's [Digital Resource Center](#) (DRC) include workshops in Digital Archiving, Podcasting, Videography, and Photography. Plans for FY2025 include the addition of quarterly, one-off, introductory professional development workshops instructed in-house by staff and CF board members, including but not limited to the following topics: Artwork Photographic Documentation; Digital Submissions and Platforms for Grants, Exhibitions & Opportunities; Resumés & Marketing for Artists & Non-profits; and Artist Business Licensing, LLCs, & Finances.
- **Convening Creative Community:** In response to visitor feedback, Creative Flagstaff plans to facilitate quarterly community forums as part of scheduled NightCap art-social events at CCA including but not limited to the following topics: Cultural Appropriation & Sensitivity; Artificial Intelligence and the Arts; and Artistic Expression and Censorship.
- **Partnerships:** Creative Flagstaff aims to build partnerships with other local non-profit organizations for collaborative programming on entrepreneurship.
- **Intersect at CCA:** Networking conversations based on discipline and sector will pair creatives with mentors for professional development connections. CCA will provide space for underrepresented groups to develop intersectionality as marginalized populations on topics such as Indigenous Rights, Queer Theory,

etc. Facilitation of conversations on community-wide cultural leadership, arts administration, and collaborative marketing.

ARTx, ArtWalk, and Satellite Venues

- **ARTx:** [Art + Ideas Experience Arizona](#) will evolve in FY2025 to encompass 3-4 engagements throughout the year, building toward a biennial festival event in 2026. ARTx will collaborate with CCA in the curation and implementation of these events. Continuing with the original ARTx model, presenting artists will be compensated for projects that bridge disciplines of art, science, and culture in the Flagstaff community.
- **Satellite Venues:** The CCA Advisory Board has identified satellite exhibitions & performances as a top priority. In FY2025, Creative Flagstaff will conduct a feasibility study and pilot one satellite exhibition in Flagstaff that aligns with cross-disciplinary initiatives between CCA and ARTx. With success of the pilot, a rollout schedule will be created for continued satellite exhibitions throughout the city of Flagstaff.
- **ArtWalk:** Creative Flagstaff will reengage in and revitalize the First Friday Flagstaff ArtWalk with expanded offerings in Heritage Square. Collaborations between ARTx and CCA will coincide with the Artwalk calendar to bring increased visibility to Flagstaff's downtown galleries and businesses.

Accountability

- Creative Flagstaff is accountable to these scopes through qualitative input: when feasible, exhibitions and programming events will be accompanied by surveys with open-ended questions to help gauge interest and input for future programming and thematic content. Social media platforms will also be activated to collect participant feedback.
- Creative Flagstaff is accountable to these scopes through quantitative data: we will continue to track participation through ticketing and headcount and compare with recent years to assess changes to audience numbers.
- Quarterly reporting: Creative Flagstaff will provide combined qualitative and quantitative reports to the City of Flagstaff aligned with invoicing and payments.

Part 3: Administration of ARPA Funds

- I. Background for Project #CL6321F, CFDA#21.027: The City is recipient of funds through the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) which authorizes the U.S. Department of Treasury (“Treasury”) to make payments from the Coronavirus Local Fiscal Recovery Fund (“Local Recovery Funds”). The distribution of Local Recovery Funds is guided by the Treasury Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 (“Uniform Guidance”), which allows the City to work with entities to administer the Local Recovery Funds.
- II. To assume responsibility for program administration and monitoring responsibilities for the pass-through distribution to other non-profit organizations of \$150,000 pursuant to the Uniform Guidance regarding the allocation of the Local Recovery Funds reserved to respond to the COVID-10 public health emergency or its negative economic impacts for City-wide local service agencies.
 - A. Contractor shall provide services such as issue Notice of Funding Announcements to eligible non-profits, evaluate proposals, award applicants, submit required reporting, oversee, and monitor awarded applicants via a social service contribution from the City of Flagstaff from a portion of the Local Recovery Funds received by the City.
 - B. Requiring organizations to cite the contribution of the City of Flagstaff toward the project(s) in all instances where the contributions to the project(s) are recognized or listed.
- III. Further detail regarding the Contractor's responsibilities related to its work administering grants is included in the Exhibits D, E, F, G and H and incorporated by reference into this Contract.

EXHIBIT B

STANDARD TERMS AND CONDITIONS

(Last Updated January 19, 2023)

*The term "Contractor" may substitute for the term "vendors," "consultants," or "firms," depending on the purpose of the underlying Contract.

IN GENERAL

1. **PARTIES:** The City of Flagstaff ("City") and the contractor identified in the Contract ("Contractor") may be referred to individually as "Party" or collectively as "Parties".
2. **NOTICE TO PROCEED:** Contractor shall not commence performance until after the City has issued a Notice to Proceed.
3. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract and provide copies to City upon request.
4. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of the Contract.
5. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, the Contract is non-exclusive and the City reserves the right to contract with others for materials or services.
6. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

MATERIALS

7. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
8. **QUALITY:** Contractor warrants that all materials supplied under the Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials and will be safe and appropriate for use as normally used. The City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
9. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
10. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to the City upon the City's acceptance of the materials.

11. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.
12. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.
13. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
14. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor may not substitute nonconforming materials and/or services. Delivery of nonconforming materials and/or services, or a default of any nature, shall constitute a breach of the Contract as a whole.
15. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
16. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens, other than the security interest held by Contractor, until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.
17. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

PAYMENT

18. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number and dates when goods had been shipped or work performed. Invoices shall be sent within thirty (30) days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
19. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, the City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
20. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of the Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment

insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line-item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

21. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
22. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by the City.
23. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by the City.
24. **AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to the City or fees and charges owed to the City under the Contract.
25. **OFAC:** No payments may be made to any person in violation of Office of Foreign Assets Control regulations. 31 C.F.R. Part 501.

SERVICES

26. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
27. **CONTROL:** Contractor shall be responsible for the control of the work.
28. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
29. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
30. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
31. **ACCEPTANCE:** If the City rejects Contractor's work due to noncompliance with the Contract, the City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.
32. **WARRANTY:** Contractor warrants all work for a period of one year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by

Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one year warranty is in addition to and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

33. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five years after completion of the Contract.
34. **RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
35. **PUBLIC RECORDS:** The Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law. A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.
36. **CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City's contract administration process. Contractor will be closely monitored for Contract compliance and will be required to promptly correct any deficiencies.

INDEMNIFICATION

37. **GENERAL INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense, arising out of the acts, errors, or omissions of Contractor, its officers, agents, employees, and subcontractors, in performing or failing to perform the responsibilities identified in the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects, and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.
38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense arising out of the alleged infringement of any patent, trademark or copyright or other proprietary rights of any third-parties arising out of Contract performance or use by the City of materials furnished or work performed under the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

39. NETWORK SECURITY AND PRIVACY LIABILITY: Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from an against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense arising out of all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

- 40. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 41. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the Parties.
- 42. AMENDMENTS:** The Contract may be amended by written agreement of the Parties.
- 43. SEVERABILITY:** If any term or provision of the Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted and the remainder of the Contract shall remain in full force and effect.
- 44. NO WAIVER:** Both Parties have the right insist upon strict performance of the Contract, and the prior failure of a Party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
- 45. ASSIGNMENT:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. Any assignment without such consent shall be null and void. No assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to the City. The Purchasing Director shall have authority to consent to an assignment on behalf of the City.
- 46. BINDING EFFECT:** The Contract shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

- 47. SUBCONTRACTING:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or

in part, without the City's prior written consent, which may be withheld for any reason. The City reserves the right to withhold consent if the subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.

48. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition, any Contractor whose business is located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02, *Civil Rights*, which also prohibits discrimination based on sexual orientation, or gender identity or expression.
49. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor's personnel shall abstain from use or possession of illegal drugs while engaged in performance of the Contract.
50. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and federal immigration laws and regulations shall constitute a material breach of the Contract and shall subject Contractor to penalties up to and including termination of the Contract. The City may, at its sole discretion, conduct random verification of the employment records of the employees of the Contractor and any subcontractors to ensure compliance with all state and federal immigration laws and regulations. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contract if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

51. **TERMINATION FOR DEFAULT:** Prior to terminating the Contract for a material breach, the non-defaulting Party shall give the defaulting Party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting Party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting Party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the Parties may execute all remedies available at law in addition to the Contract remedies provided for herein.
52. **CITY REMEDIES:** In the event of Contractor's default, the City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. The City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
53. **CONTRACTOR REMEDIES:** In the event of the City's default, Contractor may pursue all remedies available at law, except as provided for herein.

54. **TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of the Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
55. **TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, the Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If the Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by the City before the effective date of termination.
56. **TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate the Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.
57. **PAYMENT UPON TERMINATION:** Upon termination of the Contract, the City will pay Contractor for satisfactory performance up until the effective date of termination. The City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
58. **CANCELLATION FOR GRATUITIES:** The City may cancel the Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST:** Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Contract, the City may cancel the Contract within three years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

60. **COOPERATIVE PURCHASE CONTRACTS:** Presuming that Contractor agreed to such during the procurement process, Contractor will enter into cooperative purchase arrangements, as sanctioned by state and federal law, to allow Contractor to sell materials and services to any member of a cooperative group under the same pricing, terms and conditions of the contract awarded to the Contractor by the public procurement unit, following a competitive procurement process.
61. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.
62. **NOTICES:** All notices given pursuant to the Contract shall be delivered at the addresses as specified in the Contract or updated by Notice to the other Party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four days after being sent; or (c) sent by overnight courier, with receipt deemed effective two days after being sent. Notice may be sent by email as a secondary form of notice.

- 63. THIRD PARTY BENEFICIARIES:** The Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
- 64. GOVERNING LAW:** The Contract shall be construed in accordance with the laws of Arizona.
- 65. FORUM:** In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
- 66. ATTORNEYS' FEES:** If any action at law or in equity is necessary to enforce the terms of the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.
- 67. FORCE MAJUERE:**
- a. There may be events that occur during the term of the Contract that are beyond the control of both the City and Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God ("Events"). These Events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of the Contract.
 - b. There shall be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the Events and the City shall not pay additional costs incurred by Contractor as a result of such Events.
 - c. The Parties shall act in good faith to extend the Contract completion date without any penalty to Contractor and that the extension will be in an amount of time equal to any temporary delay. This provision of the Contract supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.
- 68. NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents (\$100,000), the Party shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.
- 69. CHANGES TO CONTRACT:** The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance.
- 70. FORCED LABOR OF ETHNIC UYGHURS:** If Contractor engages in for-profit activity and has ten (10) or more employees, pursuant to A.R.S. §35-394, the Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and 3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Contractor becomes aware during the term of the contract that the company is not in compliance with the written certification, the Contractor shall notify the City within five (5) business days after becoming aware of the noncompliance. If the Contractor does not provide the City with a written certification that the Contractor has remedied the noncompliance within 180 days after notifying the City of the noncompliance, this Contract terminates, except that if the contract termination

date occurs before the end of the remedy period the Contract terminations on the Contract termination date.

EXHIBIT C

STANDARD INSURANCE REQUIREMENTS

(Last Updated May 2, 2023)

*The term "Contractor" may substitute for the term "vendors," "consultants," or "firms," depending on the purpose of the underlying Contract.

1. **IN GENERAL:** Contractor shall maintain insurance against claims for injury to persons or damage to property arising from performance of or in connection with the Contract by Contractor, its agents, representatives, employees, and/or subcontractors.
2. **REQUIREMENT TO PROCURE AND MAINTAIN:** Each insurance policy required by the Contract shall be in effect at, or before, commencement of work under the Contract and shall remain in effect until all of Contractor's obligations under the Contract have been met, including any warranty periods. Contractor's failure to maintain the insurance policies as required by the Contract, or to provide timely evidence of renewal, will be considered a material breach of the Contract.
3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The following insurance requirements are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. The City does not represent or warrant that the minimum limits set forth in the Contract are sufficient to protect Contractor from liabilities that might arise out of the Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Where applicable, as related to the Scope of Work, Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability

Any Automobile or Owned, Hired, and Non-owned Vehicles	\$1,000,000
Combined Single Limit Per Accident for Bodily Injury & Property Damage	

d. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000

e. Professional Liability \$2,000,000

f. Network Security and Privacy Liability

Per claim	\$2,000,000
Annual Aggregate	\$2,000,000

4. **NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall maintain the requisite insurance requirements covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring, or remediation services in the performance of services for the City. The insurance policy shall include coverage for third-party claims. The insurance policy shall contain an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided.

5. **SELF-INSURED RETENTION:** Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that Contractor reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and/or subcontractors. Contractor shall be solely responsible for any self-insured retention amounts. The City at its option may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

6. **OTHER INSURANCE REQUIREMENTS:** The insurance policies shall contain, or be endorsed to contain, the following provisions:
 - a. Additional Insured: In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents, employees, and/or subcontractors shall be named and endorsed as additional insureds with respect to liability arising out of the Contract and activities performed by or on behalf of Contractor, including products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
 - b. Broad Form: Contractor's insurance policy shall contain broad form contractual liability coverage.
 - c. Primary Insurance: Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and/or subcontractors. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and/or subcontractors shall be in excess of the coverage of Contractor's insurance and shall not contribute to it.
 - d. Each Insured: Contractor's insurance policies shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Not Limited: Coverage provided by Contractor shall not be limited to the liability assumed under the indemnification provisions of the Contract.

- f. Waiver of Subrogation: The insurance policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and/or subcontractors for losses arising from work performed by Contractor for the City.
7. **NOTICE OF CANCELLATION**: Each insurance policy required by the insurance provisions of the Contract shall provide the required coverage and shall not be suspended, voided, cancelled, and/or reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Procurement Agent and shall reference the Contract Number.
8. **ACCEPTABILITY OF INSURERS**: Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency.
9. **CERTIFICATES OF INSURANCE**: Contractor shall furnish the City with certificates of insurance (ACORD form) as required by the Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City Contract number shall be noted on the certificates of insurance. If requested by the City, all certificates of insurance and endorsements must be received and approved by the City before the Contractor commences work.
10. **POLICIES**: The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by the Contract. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under the Contract.
11. **MODIFICATIONS**: Any modification or variation from the insurance requirements in the Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.

EXHIBIT D

FIRST AMENDMENT TO THE SCOPE OF WORK

Flagstaff Arts Council D/B/A Creative Flagstaff

Creative Flagstaff on behalf of the City of Flagstaff will administer the American Rescue Plan Act (ARPA), Coronavirus Local Fiscal Recovery Federal and Non-Federal Funds. Creative Flagstaff will provide services, such as issue Notice of Funding Announcements to eligible non-profits, evaluate proposals, award applicants, submit required reporting, oversee, and monitor awarded applicants.

Overview. This program intent is to respond to the economic and public health impacts of COVID-19 and to assist to contain impacts on our community, residents, and businesses. The Local Recovery Funds ensure that local governments have the resources needed to fight the pandemic, sustain, and strengthen the economic recovery, maintain vital public services, and make investments that support long-term growth, opportunity, and equity.

2: NEGATIVE ECONOMIC IMPACTS

Assistance to Nonprofits – Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit" – specifically that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

2.10 – Aid to non-profits – Arts and Sciences, \$150,000 (non-federal funds)

Eligible Use: Response to the negative economic impacts that were experienced by those impacted as a result of the pandemic.

Examples that could be considered:

- ✓ Decreased revenue (e.g., from donations and fees)
- ✓ Financial insecurity
- ✓ Increased costs (e.g., uncompensated increases in service need)
- ✓ Capacity to weather financial hardship
- ✓ Challenges covering payroll, rent or mortgage, and other operating costs
- ✓ Mitigate financial hardship
- ✓ Technical assistance or other services that mitigate negative economic impacts of the pandemic

7: ADMINISTRATION

7.1 – Administration - \$22,500 (15%) (non-federal funds)

Eligible Use: Costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. Costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Both direct and indirect costs are eligible as long as they are accorded consistent treatment per 2 CFR 200.403.

Direct costs are those that are identified specifically as costs of implementing the program objectives, such as contract support, materials, and supplies for the project. Indirect costs are general overhead costs of an organization.

EXHIBIT E

CITY OF FLAGSTAFF SPECIAL TERMS AND CONDITIONS

1. COMPENSATION ON A REIMBURSEMENT BASIS
 - 1.1 Payment by the City to the Provider for services and other expenses related to the administration of the Local Recovery Funds will be provided on a reimbursement basis. Reimbursement may be requested as frequently as monthly, but not less than quarterly. Reimbursement will be paid in dollar amounts approved by the City for completed work.
 - 1.2 A non-profit recipient of Local Recovery Funds can submit reimbursement requests to the Provider on a monthly, quarterly, or a one-time/final reimbursement request. The financial and performance reporting terms are to be coordinated with the Provider.
 - 1.3 To request reimbursements, the Provider shall submit a Payment Request, attached as Exhibit F and incorporated by reference in the Contract. The Provider must submit a final reimbursement request for expenses received and invoiced prior to the end of the termination of the Contract no more than forty-five (45) days after the end of the Contract. Requests for reimbursement received later than the forty-five (45) days after the Contract termination will not be paid. The final reimbursement request as submitted shall be marked FINAL. All reports shall be submitted to the contact persons as described in the Notice Section of the Contract. Final payment invoices must be received no later than sixty (60) days after completion of the Scope of Work or Contract time-period, whichever comes first. No payments shall be made on invoices received after that date.
2. ADMINISTRATIVE REQUIREMENTS
 - 2.1 Accounting. The Provider shall comply with the requirements and standards of Office of Management and Budget (OMB) and guidance in subparts A through F of 2 CFR part 200 and shall adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The Provider's financial management system shall include, at a minimum, accurate, current, and complete disclosures of expenditures of the Local Recovery Funds; records which adequately identify the source and application of Local Recovery Funds provided for financially assisted activities; effective control over and accountability for Local Recovery Funds, real and personal property, and other assets; comparison of actual outlays with budgeted amounts; and records supported by source documentation. The Provider shall maintain Local Recovery Funds received under this Contract in separate ledger accounts and not mix funds with other sources; manage funds according to applicable federal regulations for administrative requirements, cost principles, and audits; and maintain adequate business systems to comply with federal requirements. The business systems that must be maintained are: Financial Managements, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied

(it applies to all sources of funds).

- 2.2 Procurement. The Provider shall procure all materials, property, or services in accordance with the requirements of the Uniform Guidance and 2 CFR § 200.317 through 2 CFR § 200.327. The Provider's procurement outreach and documentation shall be governed by the price limits set forth in the Procurement Code, notwithstanding OMB Circular A-110. All procurement undertakings must make an effort to utilize Minority and Women Owned Business Enterprises. The Provider shall maintain an inventory of all equipment, furniture, and non-expendable personal property purchased with Local Recovery Funds.
- 2.3 Internal Controls. The City will evaluate the Provider to determine if there is a risk that the Provider will not comply with federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate Subrecipient monitoring including the factors listed in 2 CFR § 200.331(b)(1-4). The Provider will operate according to a written set of policies and procedures that define staff qualifications and duties, lines of authority, separation of functions, and access to assets and sensitive documents. Included in these policies and procedures will be written accounting procedures for approving and recording transactions and the control of cash receipts, disbursements, and cash balances. The Provider's financial policies and lines of authority shall be reviewed during monitoring visits defined in this Contract.
- 2.4 Monitoring. The City shall monitor the use of the Local Recovery Funds, including reviewing financial and programmatic reports provided by the Provider. The City shall follow-up and ensure that the Provider takes timely and appropriate action on all deficiencies pertaining to the federal award detected through audits, on-site reviews, and other means. The City shall issue a management decision for audit findings pertaining to the Local Recovery Funds provided to the Provider from the City as required by 2 CFR § 200.521, "Management decision." The Provider agrees to cooperate and provide all information necessary for the City to monitor the Provider periodically to ensure compliance with this Contract, compliance with federal regulations and laws, fiscal responsibility, adequate performance, and any other item of concern relating to the use of Local Recovery Funds and the provisions defined in this Contract, including by permitting the pass-through entity and auditors to have access to the Subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of 2 CFR § 200.300, "Statutory and national policy requirements," 2 CFR § 200.309, "Modifications to period of performance," 2 CFR § 200.331, "Subrecipient and contractor determinations," and Subpart F, "Audit Requirements." The monitoring will take the form of at least one site visit of the Provider's place of business and/or construction site and other various requests for information. During the term of this Contract, the Provider shall be monitored periodically by the City, both programmatically and financially, to ensure that the program's goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria, are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance, and administrative issues relative to each program, and will identify areas where technical assistance and other support may be

needed. All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the Provider and the City.

- 2.5 Documentation, Record-Keeping, and Other Requirements Specific to Expenditure Categories. The Provider shall maintain all records required by federal and state law that are pertinent to the activities to be funded under this Contract. Such records shall include but not be limited to:
- 2.5.1 All additional reporting requirements specific to the categories as identified by Treasury attached as Exhibit G and incorporated by reference in this Contract;
 - 2.5.2 Records providing a full description of each activity undertaken;
 - 2.5.3 Records demonstrating that each activity undertaken meets one of the Expenditure Categories identified in the U.S. Department of Treasury Compliance and Reporting Guidance, Appendix 1: Expenditure Categories;
 - 2.5.4 Records required to determine the eligibility of activities;
 - 2.5.5 Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with Local Recovery Funds;
 - 2.5.6 Financial records as required by 2 CFR Part 200 Performance and Financial Monitoring and Reporting, Sections 200.328, 329, and 331; and
 - 2.5.7 Other records necessary to document compliance with 2 CFR Part 200 Performance and Financial Monitoring and Reporting, Sections 200.328, 329, and 331.
- 2.6 Records Retention. The Provider will retain all records pursuant to the City's record retention policy and federal requirements, whichever period is longer. Records must be retained longer if any litigation, claim, or audit is started before the expiration of the record retention period. Other extensions to the record retention period may apply as specified in 2 CFR § 200.333.
- 2.7 Client Data. The Provider shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, ethnicity, special needs, family size, elderly status, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
- 2.8 Disclosure. The Provider understands that client information collected under this Contract is private and the use or disclosure of such information, when not directly connected with the administration of the City's or the Provider's responsibilities with respect to services provided under this Contract, is prohibited by Arizona State law unless written consent is obtained from such

person receiving service and, in the case of a minor, that of a responsible parent or guardian.

- 2.9 Audits and Inspections. All of the Provider's records with respect to any matters covered by this Contract shall be made available to the City, grantor agency, their designees, or the Federal Government (including but not limited to Treasury, the Comptroller General of the United States, or any of their duly authorized representatives), unless otherwise protected by law, at any time during normal business hours, as often as the City or grantor agency deems necessary until all required records are turned over to the City of Flagstaff to audit, examine, and make excerpts or transcripts of all relevant data, provided. Any deficiencies noted in audit reports must be fully cleared by the Provider within thirty (30) days after receipt by the Provider. Failure of the Provider to comply with the above audit requirements will constitute a violation of this Contract and may result in the withholding of future payments. The Provider agrees to have an annual Provider financial audit conducted in accordance with current City policy and, as applicable, subject to the Single Audit act of 1984 and all relevant OMB guidance, including, 2 CFR § 200, Subpart F, "Audit requirements." The Provider will conduct an annual audit conducted in accordance with 2 CFR § 200, Subpart F, "Audit requirements," if the Provider expends more than seven-hundred fifty thousand dollars (\$750,000) from federal awards, in compliance with the Federal Single Audit Act (31 U.S.C. par. 7501-7507), as amended by the Single Audit Act Amendments of 1996 (P.L. 104 to 156).
- 2.10 Monthly/Quarterly Reports to City. During the entire Contract period, the Provider shall prepare and provide the City monthly or quarterly reports by submitting the Performance Report, attached as Exhibit H and incorporated by reference in this Contract. However, the Provider need only provide a report if it has been received from the subgrantee within the reporting period. If the scope of the Project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the month in which the Project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the Project as deemed necessary by the City. Notwithstanding anything to the contrary, the Provider shall not be required to provide any of the Provider's confidential or proprietary information in reports provided to the City, including without limitation, any information regarding research collaborators, research plans, or any data, results, or other information resulting from the Provider's performance of research or any other activities relating thereto. The Provider agrees to submit other reports and records as may be required by the City from time to time, which are related to the implementation of the Project, adherence to the Contract, and adherence to federal, state, and local laws and regulations.
- 2.11 Close-Out Report. The Provider is responsible for the close out of the Local Recovery Funds. The Provider's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to, making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and

determining the custodianship of records. The City will send the Provider written notification that a Close-Out Report is due when one of the following contractual obligations have been met, and the Provider shall submit the Close-Out Report attached in that letter within sixty (60) days of receiving this notification:

2.11.1 The Recovery Funds have been expended and the Scope of Work has been completed;

2.11.2 The Contract period has expired; or

2.11.3 The Scope of Work has been completed.

2.12 Subrecipient Obligations. The Provider shall perform all obligations required of subrecipients under the rules governing Recovery Funds.

3. ACKNOWLEDGEMENT

The Provider shall acknowledge during the term of the Contract the contribution of the City of Flagstaff Recovery Funds toward the Project in all instances where the Project is advertised. All activities, facilities, and items utilized pursuant to this Contract shall be prominently labeled as receiving Local Recovery Funds. In addition, the Provider will include a reference to the support provided herein in all publications made possible with Local Recovery Funds made available under this Contract.

4. COMPLIANCE WITH ALL LAWS

4.1 The Provider shall comply with the Grant Provisions for the U.S Department of Treasury, American Rescue Plan Act, Coronavirus State and Local Fiscal Recovery Funds, attached as Exhibit I and incorporated by reference in this Contract.

4.2 The Provider shall carry out its responsibilities in compliance with the requirements of Executive Order 11063, as amended by Executive Order 12259; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the prohibitions against age discrimination under the Age Discrimination Act of 1975 (42 U.S.C. § 6101-07); and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (19 U.S.C. § 794).

4.3 The Provider shall comply, as applicable, with the requirements of the Davis-Bacon Act (40 U.S.C. § 276a-276a-5), as supplemented by Department of Labor regulations (29 CFR Part 5); and comply with Sections 103 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. § 327-330), as supplemented by Department of Labor regulations (29 CFR Part 5).

4.4 The Provider shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations. (41 CFR chapter 60).

- 4.5 The Provider agrees to comply with the Copeland "Anti-Kick Back" Act (18 U.S.C. § 874), as supplemented in Department of Labor regulations (29 CFR part 3).
- 4.6 The Provider agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368m Executive Order 11738), and Environmental Protection Contract regulations (40 CFR part 15).
- 4.7 The Provider agrees to comply with all applicable standards, orders, or regulations issued under 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.
- 4.8 The Provider agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency.
- 4.9 The Provider agrees to comply, as applicable, with 2 CFR part 200, Uniform Administrative Requirements, Cost Principle, and Audit Requirement for Federal Awards.

5. CERTIFICATION OF COMPLETION

Upon satisfactory completion of the Close-Out Report and submission of all required documentation, the City shall provide the Provider with a letter that certifies completion. The certification is conclusive determination that the Provider has satisfactorily completed its contractual obligations. The City shall not unreasonably withhold such certification.

CITY OF FLAGSTAFF
ARPA - CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS

PERFORMANCE REPORT

CONTRACTOR/SUBRECIPIENT:	_____	DUNS NUMBER:	_____
CONTACT NAME:	_____	EMAIL ADDRESS:	_____
ADDRESS:	_____	PHONE NUMBER:	_____
TOTAL AWARD AMOUNT:	_____	EXPENDITURE CATEGORY:	_____
PROJECT TITLE:	_____	PROJECT NUMBER:	_____
START DATE:	_____	EXPIRATION DATE:	_____
BRIEF PROJECT SUMMARY:	_____		

REPORTING PERIOD (MM/YY - MM/YY): _____

PERCENTAGE OF PROJECT COMPLETENESS: _____

SUMMARY OF THIS PERIOD'S PROGRESS: _____

SUMMARY OF ACTIVITIES PLANNED FOR NEXT PERIOD: _____

CERTIFIED BY:		LIST OF ATTACHMENTS, IF APPLICABLE: (ie. Additional reports, photos, etc)
SIGNATURE	DATE	_____
NAME AND TITLE		_____



GRANT PROVISIONS

Sponsor: City of Flagstaff

Funding Agency: U.S. Department of the Treasury

Grant Project Title: American Rescue Plan Act (ARPA)
Coronavirus State and Local Fiscal
Recovery Funds

Grant Number: ARPA-LRF-6321

FEDERAL - GRANT PROVISIONS

The Contractor and its Subcontractor shall comply with the following grant provisions;

Applicable Laws

Compliance with all applicable Federal, State, and Local laws and regulations.

Awards to debarred and suspended parties

The City will not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Orders 12549 and 12689, "Debarment and Suspension."

Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Equal Employment Opportunity

Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

Clean Water and Air Act

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Resource Conservation and Recovery Act

Compliance with the Resource Conservation and Recovery Act (RCRA) requires federal agencies to assess the impact that debris, debris removal, hazardous wastes, and hazardous waste clean-up projects will have on air and water quality and take actions to prevent degradation. RCRA gives EPA the authority to control hazardous waste from the "cradle-to-grave" to facilities that generate hazardous materials and sets forth a framework for the management of non-hazardous waste (42 USC, 6901).

Conflicts of Interest

The City (grantee) and Contractor (subgrantees) will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Copyrights

Reports, maps or other documents produced in whole or in part are works for hire and shall not be the subject of any application for copyright by or on behalf of the Contractor or its Subcontractor. The Contractor shall advise the City or its designee at the time of delivery of any copyrighted or copyrightable work furnished under this Agreement, or any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

Patent Fees and Royalties

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in Funding Agency Contracting Provisions for Construction Projects the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

Responsible Contractors

The City will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Access and Retention of Records

Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

CODE OF FEDERAL REGULATION (CFR) - Title 2: Grants and Agreements

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of

mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

AMERICAN RESCUE PLAN ACT (ARPA) – CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS (CLFRF) GRANT PROVISIONS

Funds are received from the U.S. Department of Treasury, Coronavirus Local Fiscal Recovery Fund (CLFRF) respectively (referred to as “Coronavirus State and Local Fiscal Recovery Funds” or “SLFRF”), Assistance Listing, CFDA Number 21.027.

Recipients under the State and Local Fiscal Recovery Funds (SLFRF) 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 (the “SLFRF statute”) that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

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

All Subrecipients, Contractors and Subcontractors are required to comply with the statutory and regulatory requirements and the terms and conditions of the award.

Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense, and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, and abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- SLFRF-funded projects should advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per Memorandum M-21-20 and Memorandum M-20-21.

Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to such eligible workers of the recipient, or by providing grants to eligible employers that have eligible workers who performed essential work;

3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID–19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; and
4. To make necessary investments in water, sewer, or broadband infrastructure.

Treasury adopted an Interim Final Rule to implement these eligible use categories and other restrictions on the use of funds under the SLFRF program.¹ It is the recipient’s responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

Treasury’s Rule

Treasury’s Interim Final Rule details recipients’ compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury’s Interim Final Rule, and any subsequent final rule when building appropriate controls for SLFRF award funds.

Eligible and Restricted Uses of SLFRF Funds

As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF 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 SLFRF 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 SLFRF 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 SLFRF award funds: recipients may not deposit SLFRF funds into a pension fund; recipients that are States or territories may not use SLFRF 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 SLFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of SLFRF funds outside the scope of eligible uses, including that recipients generally may not use SLFRF 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.

Applicable Federal Policies

- Recipients, Subrecipients, Contractors and Subcontractors must follow the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) and the Terms and Conditions of the SLFRF assistance.
- American Rescue Plan Act (P.L. 117-2)
- U.S. Department of the Treasury
 - SLFRF Regulations (31 CFR 35)
 - Compliance and Reporting Guidance
 - Frequently Asked Questions
 - Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR 1000)
 - OMB "Uniform Guidance" 2 CFR 200, adopted by reference
 - Award Terms and Conditions
 - Assistance Listing Number 21.027 (Formerly CFDA Number)

SAM.gov Requirements

All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>).

Contracts and Subawards to Debarred and Suspended Parties

Pursuant to Code of Federal Regulations 2 CFR Subpart C §200.213, grantees and subrecipients must not make an award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension". By entering into this agreement Subrecipient agrees to comply with all relevant codes including 2 CFR Subpart C, "Responsibilities of Participants Regarding Transactions". When entering into a covered transaction with another person at the next lower tier, Subrecipient must verify that the person with whom you intend to do business is not excluded or disqualified.

Civil Rights Compliance

Recipients and Subrecipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of

race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

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. § 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. § 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. § 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. § 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. § 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. § 4.116; F.A.R. § 22.402(b).

Davis-Bacon Act Requirements

Required contract provisions (appearing at 29 C.F.R. § 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. §§ 3.5-3.6); and
- 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. § 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.

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 SF-1444 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, the recipient should attach the completed SF-1444 form using the "Add File" button. The SF1444 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 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. §§ 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. § 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.