

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Community and Human Development

AGENDA DATE: June 22nd, 2020

CONTACT PERSON/PHONE: Nicole Ferrini, Director, 212-1659, ferrininm@elpasotexas.gov
Abraham Gutierrez, Administrative Services Manager, 212-1658, gutierrezax@elpasotexas.gov

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

Discussion and action that the City Manager be authorized to sign a Sub-Recipient Grant Agreement with El Paso Community Foundation to deploy the Community Assistance Fund to address the Gap Assistance Program.

BACKGROUND / DISCUSSION:

On March 13th, 2020 the Governor of the State of Texas declared a state of disaster, and Mayor signed a Local Emergency Declaration related to the COVID-19 pandemic crisis. Many individuals and families have been affected by the economic effects of COVID-19 and require direct assistance to weather this crisis. The funding for this program will be deployed from the U.S. Treasury Coronavirus Relief Fund. All of the assistance required will be subject to the Federal and Local requirements.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

\$1,500,000.00 – 2235-G20COVIDTR-G20COVIDTR-471-71010-CPR01

BOARD / COMMISSION ACTION:

NA

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____



DEPARTMENT HEAD:

Nicole Ferrini, Community and Human Development, Director

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

WHEREAS, on March 13, 2020 the President of the United States declared a national emergency, the Governor of the State of Texas declared a state of disaster, and the Mayor of the City of El Paso (“City”) declared a local state of disaster in relation to COVID-19; and

WHEREAS, on March 17, 2020 City Council issued an Emergency Ordinance Instituting Emergency Measures Due to A Public Health Emergency (“Emergency Ordinance”); and

WHEREAS, the City received funds from the Coronavirus Aid, Relief and Economic Security Act (“**CARES Act**”) administered by the United States Department of Treasury (“**Granting Agency**”) for the Coronavirus Relief Fund program (“**Program Funds**”); and

WHEREAS, the Subrecipient has submitted an application for funds and the City’s Community Development Department (the “**Department**”) has approved the application; and

WHEREAS, the funds used in this Agreement are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19); and

WHEREAS, the funds used in this Agreement were not accounted for in the budget most recently approved by the City of El Paso; and

WHEREAS, the expenditures under this Agreement will be incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and

WHEREAS, the City finds that the people benefiting from the assistance under this Agreement, are people that are suffering from employment or business interruptions due to COVID-19 related business closures; and

WHEREAS, the City finds that the funds distributed under the Program Scope of this Agreement are necessary expenditures in the reasonable judgment of the City Council of the City of El Paso; and

WHEREAS, the provisions in this Agreement ensure that the Program scope is provided for its intended use of providing economic support to those suffering from employment or business interruptions due to COVID-19 related business closures; and

WHEREAS, the assistance provided under the Program Scope of this Agreement is structured in such a manner to ensure as much as possible, within the realm of what is administratively feasible, that such assistance is necessary; and

WHEREAS, the Granting Agency has approved Program Funds to be used to provide emergency financial assistance to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency to assist such individuals with payment of emergency individual needs; and

WHEREAS, the Program Scope of the Agreement follows the requirements of the Granting Agency regarding emergency financial assistance.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO THAT:

The City Manager be authorized to sign a Subrecipient Grant Agreement with El Paso Community Foundation to deploy the Community Fund Gap Assistance program. The amount of the agreement is capped at \$1,500,000. Further, that the City Manager be authorized to sign any amendments to the agreement without further City Council approval, provided that such amendments do not increase the funding amount and provided such amendments meet all federal requirements. Further, the City Manager is authorized to sign any documents and exercise any rights of the City under the agreement.

APPROVED this _____ day of _____, 2020.

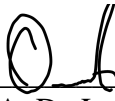
THE CITY OF EL PASO:

Dee Margo
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Nicole Ferrini
Chief Resilience Officer

due to the COVID-19 public health emergency to assist such individuals with payment of emergency individual needs; and

WHEREAS, the Program Scope follows the requirements of the Granting Agency regarding emergency financial assistance.

The parties agree as follows:

1. **Funding Amount. Payments by City.** Subrecipient will be compensated in three distributions: 50% of available funds or \$750,000 payable within ten (10) days of execution of the Agreement (“**First Disbursement**”); 30% of available funds or \$450,000 payable no later than August 1 (“**Second Disbursement**”); and 20% of available funds or \$300,000 payable no later than October 1, 2020 (“**Final Disbursement**”). Payment will be made on the basis of actual Allowable Expenses paralleling the performance target specified in the Program Scope. Subrecipient’s expenditures must be proportional to services provided. All line items reported and requested must reconcile with the corresponding line item in the Subrecipient’s general ledger accounts, on a current basis, and with year to date balances. Allowable Expenses will be approved by the City and may be withheld if such requests or backup materials are deemed to be inaccurate, unreasonable, or inadequate. For purposes of this Agreement, the term “**Allowable Expenses**” means any expenses eligible for reimbursement under federal, state, and local laws, such as the OMB Requirements, Program Funding Requirements, and Granting Agency Requirements (all as hereinafter defined), applicable to the Program Funding and/or requirements by the Granting Agency. Applicant acknowledges and agrees that Allowable Expenses may change over time in accordance to Granting Agency clarifications and regulations. The City agrees to provide the Subrecipient with any changes to Granting Agency requirements and regulations and the Subrecipient will verify federal regulations and consult with the City for any questions regarding what expenses constitute Allowable Expenses. The Subrecipient acknowledges and agrees that the payment by the City of any Sub-grant Amount is contingent on the City receiving funds from the Granting Agency. Subrecipient understands that nothing in this Agreement obligates the City to provide the Subrecipient any funds under this Agreement if the City does not receive funds from the Granting Agency. The City may withhold the Second Disbursement and the Final Disbursement from the Subrecipient if the Department director reasonably believes that the Subrecipient has not complied with all obligations under this Agreement, the Subrecipient has breached any representations and warranties, the submitted expenditures are not in accordance to the approved Program Budget as provided in this Agreement, the Subrecipient has not met all Granting Agency requirements, the expenses are not considered allowable expenses under Granting Agency regulations or federal, state or local laws, the expenses have not been incurred, or that any proof of expenses provided by the Subrecipient are not adequate. The Subrecipient will repay to the City any amounts received by the Subrecipient that are not allowed under this Agreement, the OMB Requirements, the Program Fund Requirements, or the Granting Agency Requirements only as expressly provided in Section 2 hereof. Will

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only use funding under this contract for the Program Scope in accordance to the approved program Budget.

2. **Program Scope**. Subrecipient will comply with all the requirements and deadlines described in the Program Scope. The Subrecipient will be responsible for repaying the City any funds that the Subrecipient expends in violation of any provisions under this Agreement, including the OMB Requirements, the Program Fund Requirements, and the Granting Agency Requirements but only to the extent specifically provided in this Section 2 or in the Program Scope. Notwithstanding any provision to the contrary herein, the Subrecipient will not be liable for the repayment of any funds (i) that were distributed in accordance with Program Fund Requirements in effect and provided to the Subrecipient by the City as of the date of distribution; or (ii) if the Program Scope is found by the Granting Agency to be ineligible, provided that the Subrecipient will immediately cease any activities under the Program Scope upon notification by the City, notification by the Granting Agency, or actual knowledge by the Subrecipient that the Program Scope has been disallowed. Upon a change in the Program Fund Requirements in effect as of the date hereof, the Subrecipient will be liable for repaying any funds in violation of the revised Program Fund Requirements provided (i) it has received notification from the City of any change in Program Fund Requirements that would render said funds in violation of said requirements or (ii) actual knowledge by the Subrecipient that the Program Scope or a particular expense provided therein has been disallowed by the Program Fund Requirements.
3. **Term**. Unless terminated sooner as allowed under this Agreement, this Agreement commences on the Effective Date and terminates December 30, 2023.
4. **Budget**. The Subrecipient will adhere to the program budget attached to this Agreement as Attachment “B” (the “**Program Budget**”), and made a part hereof for all purposes. The categories set forth in the Program Budget are hereby accepted as Allowable Expenses and shall be used in accordance with the Program Scope. The City shall immediately notify Subrecipient if any item provided in the Program Budget is no longer acceptable as an Allowable Expense. All specific expenses are subject to review and may be rejected if such specific expense does not comply with the terms of this Agreement. The Subrecipient will obtain the advance approval of the Department director for any changes to the Program Budget, such changes including but not limited to increases in budget, decreases in budget, and changes in budget category amounts. If the City determines that unexpended funds are present, then the City may adjust the Sub-grant Amount to remove such amounts at the City’s discretion.
5. **Insurance**. The Subrecipient will comply with all of the following insurance requirements for the full term of this Agreement. Any gaps in insurance coverage are considered a breach of the requirements of this Agreement.

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- a. Commercial Liability Insurance. The Subrecipient will procure Commercial Liability Insurance in the minimum amounts of \$1,000,000 per occurrence for bodily injury or wrongful death and \$1,000,000 for property damage. The Subrecipient will ensure that the liability insurance provides coverage for premises liability, operations liability, products and completed operations liability, personal and advertising injury, contractual liability, broad form property damage liability, and independent contractor liability. If the Subrecipient is performing services near any railroad or streetcar track, then the Subrecipient will provide liability insurance that provides railroad protective liability insurance in the amount of \$1,000,000 Bodily Injury/\$1,000,000 Property Damage Liability per occurrence
- b. Workers Compensation Insurance. If required by law, the Subrecipient will procure workers compensation insurance as required by law.
- c. With the exception of the workers compensation insurance, the Subrecipient will add the City as an additional insured to the all insurance policies required under this Agreement.
- d. The Subrecipient will procure all insurances with an endorsement that requires notification to the additional insured prior to any changes or cancellations in coverage.
- e. The Subrecipient will obtain prior approval of the City for any deductibles.
- f. The Subrecipient will procure all insurances from businesses authorized to do business in Texas. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. The City may reject an issuer of an insurance policy in the City's sole discretion.
- g. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, their elected and appointed officials, officers, agents or employees.
- h. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.
- i. Prior to starting any activities under this Agreement, the Subrecipient will provide the City proof of compliance with all insurance requirements in this Agreement. Proof provided by the Subrecipient to the City must be in the form of a certificate of insurance accompanied by all endorsements. Following a written request by the City, the Subrecipient will provide the City a complete copy of all insurance policies required under this Agreement.

6. **Indemnification. TO THE EXTENT ALLOWED BY LAW AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE SUBRECIPIENT WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE CITY'S OFFICERS AND EMPLOYEES FROM ALL CLAIMS OF PROPERTY DAMAGE, PROPERTY LOSS, PERSONAL INJURY, DEATH, ILLNESS, INTELLECTUAL**

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PROPERTY RIGHT INFRINGEMENT, REGULATORY COMPLIANCE RELATED TO THE SUBRECIPIENTS AND/OR THE SUBRECIPIENT'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES, OR LICENSEES ACTIONS OR OMISSIONS. THE OBLIGATION UNDER THIS SECTION REMAINS IN EFFECT FOR ALL CLAIMS ARISING DURING THE TERM OF THIS CONTRACT.

7. **Release.** To the extent allowed by law, the Subrecipient releases the City and the City's officers, officials, and employees from all claims of property damage, property loss, injury, or death sustained by the Subrecipient while performing any activities related to this Agreement.
8. **Damage to City Property.** The Subrecipient will pay the costs of repairing any damages to City property (including public right of way) caused by the Subrecipient or the Subrecipient's contractors, subcontractors, or agents. The Subrecipient will make payment for any damages within 30 calendar days of receiving an invoice from the City.
9. **Termination.**
 - a. Non-Appropriation of Funds by the City. If the City fails to appropriate sufficient funds to carry out the obligations of the City under this Agreement, then the City may terminate this Agreement upon 30 calendar day notice to the Subrecipient.
 - b. Cancellation of Funds by Granting Agency. If the Granting Agency cancels Program Funds, or fails to provide the City with Program Funds, then the City may terminate this Agreement immediately following notification to the Subrecipient.
 - c. For Cause. Either party may terminate this Agreement for cause following a 30 calendar day opportunity to cure. For purposes of this Agreement "for cause" means a failure of a party to perform any obligations under this Agreement or breach of any representations and warranties made under this Agreement. If the City terminates this Agreement for cause, then the Subrecipient will pay back to the City all funds disbursed by the City to the Subrecipient under this Agreement but only to the extent provided in Section 2 hereof.
 - d. Application. The City may terminate this Agreement if the City determines that the Subrecipient submitted false or inaccurate information in the Subrecipient application for funds. The Subrecipient will repay to the City any funds received by the Subrecipient under this Agreement in violation of any Granting Agency requirements but only to the extent provided in Section 2 hereof.
 - e. The Subrecipient may terminate this Agreement by sending to the City written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the City determines in the case of partial termination that the reduced or modified portion

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of the Sub-grant Amount will not accomplish the purposes for which the federal award was made, the City may terminate the Sub-Grant Amount in its entirety.

- f. Close out. Regardless of the reason or method of termination of this Agreement, the Subrecipient will remain responsible for complying with all close out procedures required under the OMB Requirements and the Program Fund Requirements.

10. **Audit and Inspections**. Subrecipient will keep all records related to this Agreement for a period of 3 years after December 30, 2020. Until termination of this Agreement, Subrecipient will allow the City, the Granting Agency, federal Inspectors General, and/or the Comptroller of the United States to inspect all records reasonably related to this Agreement within 3 calendar days from request in order to make audits, examinations, excerpts, and transcripts. The Subrecipient will provide copies to the requesting party of any records requested at the Subrecipient's expense. Further, the Subrecipient will allow timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

11. **Liability for Funds**. The Subrecipient will repay to the City any funds that the Subrecipient accepts or disburses under this Agreement in violation of this Agreement, the OMB Requirements, the Program Funding Requirements, or the Granting Agency Requirements but only to the extent provided in Section 2 hereof.

12. **Compliance with Federal Regulations**. The Subrecipient will comply with all requirements of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified under Title 2 of the Code of Federal Regulations part 200 as may be amended, including all appendixes ("**OMB Requirements**"). The Subrecipient understands that Attachment C is only a portion of the OMB requirements and that the Subrecipient must refer to Title 2 of the Code of Federal Regulations part 200 for all requirements. Further, the Subrecipient understands that the City must also comply with the OMB requirements and the City depends on the Subrecipient's cooperation in order to comply with such OMB requirements. As such, the Subrecipient will perform any obligations reasonably requested by the City that are necessary to ensure that the City complies with the OMB requirements.

- a. In addition, the Subrecipient will comply with all Program Funds requirements listed under Section 5001 of the CARES Act ("**Program Fund Requirements**"). In addition, the Subrecipient will perform any obligations reasonably requested by the City that are necessary to ensure that the City complies with Program Fund Requirements. The Subrecipient understands that Attachment D - Granting Agency Requirements is only a portion of the Program Fund Requirements and that the Subrecipient must refer to Section 5001 of the CARES Act for additional requirements.

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13. **Monitoring.** The Subrecipient will allow the City reasonable access to inspect the Subrecipient's Offices and facilities subject of this Agreement to ensure compliance with local, state, and federal requirements. The City will provide the Subrecipient reasonable notice prior to a visit. Following a visit the City may provide the Subrecipient with a report regarding the findings of the visit. If the City provides the Subrecipient with a report, then the Subrecipient will correct any findings and provide a written response to the City addressing the City's findings.
14. **Post Close out.** As required under the OMB Requirements, the closeout of a Federal award does not affect any of the following:
 - a. The right of the Granting Agency or the City to disallow costs and recover from the Subrecipient funds on the basis of a later audit or other review. To the extent allowed by the OMB requirements and the Program Fund Requirements and only to the extent provided in Section 2 hereof, the Subrecipient will repay the City any funds that are determined to be disallowed costs even if performance obligations or work has been completed.
15. **Reversion of Assets.** The Subrecipient will transfer to the City any funds at hand at the time of expiration or termination of this Agreement. The Subrecipient will transfer such funds within 10 calendar days of the expiration or termination of the Agreement.
16. **Protected Health Information.** If applicable by law, the Subrecipient will execute a HIPAA Business Associate Agreement attached to this Agreement as Attachment "E".
17. **Representations and Warranties.** The Subrecipient represents and warrants that all information submitted to the City, including the initial application for funds, is true and correct. Further, the Subrecipient represents and warrants that the Subrecipient is in good legal standing with the laws of the Subrecipient's state of incorporation, the Subrecipient is legally authorized to perform business in Texas, and the person's signing the Agreement on behalf of the Subrecipient are authorized to sign this Agreement. If Subrecipient is doing business under an assumed named, a copy of the "Assumed Name Certificate" filed with the El Paso County Clerk shall be submitted to the City prior to the execution of this agreement. The Subrecipient represents that the Subrecipient has not had any allegations or cases made against the Subrecipient related to fraud or bribery including at a criminal, civil, or administrative level. The City represents and warrants that the funds to be made available under this Agreement are to be distributed to Subrecipient as (i) necessary expenditures to address emergency individual needs incurred due to the public health emergency with respect to COVID-19 and (ii) were not accounted for in the budget most recently approved as of March 27, 2020 by the City. The Subrecipient also represents and warrants that any requests for reimbursement submitted by the Subrecipient to the City under this Agreement will be for (i) necessary expenditures to address emergency individual needs incurred due to the public health emergency with respect to COVID-19,

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and (ii) expenses that have been incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

18. **Additional Requirements.** The attachments listed on this section are incorporated into this Agreement in full and are considered to be an essential part of this Agreement. The Subrecipient will comply with the requirements of all of the attachments incorporated to this Agreement. If there are any conflicts between any attachment and this Agreement, then the most stringent requirement governs.
 - a. Attachment “A” - Program Scope
 - b. Attachment “B” - Program Budget
 - c. Attachment “C” - 2 CFR Part 200 Contract Requirements
 - d. Attachment “D” - Granting Agency Requirements
 - e. Attachment “E” - HIPAA Business Associate Agreement

19. **Copyrights, Licenses, and Patents.** If this Contract results in a copyrightable material, the City’s approval must be obtained to copyright the work. Additionally, the City reserves a royalty fee along with a nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes. Any discovery or invention arising out of or developed in the course of the services aided by this Agreement shall be promptly and fully reported to the City for a determination as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest. Nothing in this Section relieves the contractor from complying with the OMB Requirements regarding intellectual property.

20. **General Provisions.**
 - a. **Subcontracting.** Unless allowed under the Program Scope, the Subrecipient may not subcontract any activities under this Agreement without the prior written consent of the City.
 - b. **Definitions/Recitals.** A defined term under this Agreement appears in **bold face** print when first defined. All Recitals in this Agreement are incorporated into and made a part of this Agreement.
 - c. **Discrimination Prohibited.** Subrecipient shall comply with all laws prohibiting discrimination as further specified in Program Scope and the applicable local, state and federal requirements. Subrecipient must file the assurance required under City of El Paso Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner which impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Agreement. Subrecipient covenants that during the term of this Agreement, the Subrecipient, its associates, officers, board or committee members, and/or employees shall have no interest, direct or indirect, which will conflict in

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any manner with the performance of the services under this Agreement and that none of its paid personnel shall be employees of the City or have any contractual relationship with the City.

- d. Compliance with Laws. Subrecipient will comply with all applicable laws while performing activities under this Agreement. Subrecipient will obtain all licenses and pay all fees or other charges that may be required to perform the activities under this Agreement, if applicable.
- e. Subrecipient's Composition. Subrecipient shall notify the City in writing within thirty (30) calendar days in the event of any change in Subrecipient's ownership, organization, control and management, and non-profit tax status. Subrecipient shall, at least annually, submit to the City a list of its current membership and board of directors with their appropriate titles. The City reserves the right to terminate this Agreement if the composition of the Subrecipient's organization changes in a manner that would make the Subrecipient ineligible for funds under program requirements.
- f. Independent Contractor Relationship. Nothing in this Agreement creates and employer employee relationship between the parties. The City is not subject to any obligations or liabilities of the Subrecipient incurred in the performance of this Agreement.
- g. Confidentiality. The City will handle all release of information obtained under this Agreement as required under the Texas Public Information Act. The Subrecipient agrees to the release of this Agreement pursuant to a request made under the Texas Public Information Act. This clause survives the completion or termination of this Agreement.
- h. Successors and Assigns. This Agreement is binding on the City and the Subrecipient, and the Subrecipient's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- i. Venue. This Agreement is entered in the City and County of El Paso, Texas. Venue for any dispute pertaining this Agreement is in El Paso County, Texas.
- j. Governing Law. This Agreement is governed by Texas law.
- k. Captions. The captions of this Agreement are for information purposes only, and in no way affect the substantive terms or conditions of this Agreement.
- l. Severability. Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity does not affect the remaining provisions of this Agreement.
- m. Notices. The parties will send all notices required or allowed under this Agreement, in writing and by certified mail or in person, to the addresses described in this Section. All notices are deemed received on the date of delivery in person or 3 calendar days following the postmark date on the notice.

To the City:

City of El Paso
Community and Human Development

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Attn: Grants and Program Administration
801 Texas Ave., 3rd Floor
El Paso, TX. 79901

With a Copy to: City of El Paso
Attn: City Manager
300 N. Campbell St.
El Paso, TX. 79901

Subrecipient: EL PASO COMMUNITY FOUNDATION
Attn: Richard Eric Pearson, President/CEO
333 N. Oregon, 2nd Floor
El Paso, Texas 79901

Either party may change the address above by sending written notification to the other party.

- n. No third party beneficiaries. This Agreement is entered for the benefit of the City and the Subrecipient only. No third party has any rights to enforce any obligations or rights under this Agreement.
- o. Governmental Function. The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- p. Entire Agreement. This Agreement constitutes the entire agreement by the parties.
- q. Time of the Essence. Time is of the essence with respect to the rights and obligations of the parties as described herein.

[Signatures begin on the following page]

CITY OF EL PASO:

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Tomás González
City Manager

APPROVED AS TO FORM:



Omar De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Nicole Ferrini, Director
Community & Human Development Dept.

Acknowledgment

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this ____ day of _____, 2020,
by **Tomás González**, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

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**ATTACHMENT “A”
Program Scope**

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**ATTACHMENT “B”
Program Budget**

For Internal use only

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ATTACHMENT “C”
2 CFR Part 200 Contract Requirements

[Insert Appendix II of 2 CFR Part 200]

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ATTACHMENT “D”
Granting Agency Requirements

Section 5001 of the CARES Act, Treasury Guidance, and Title VI. Treasury Guidance is subject to change. Any changes to the Treasury Guidance will be treated as part of this Agreement, but only as of the date of such change in guidance.

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ATTACHMENT “E”
HIPAA Business Associate Agreement

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Attachment A: Program Scope

Subrecipient: **El Paso Community Foundation**
 333 N. Oregon St., 2nd Floor
 El Paso, TX 79901

This Program Scope is attached to and made a part of the Subrecipient Agreement (the “Agreement”) between the City of El Paso (the “City”) and Subrecipient dated _____ and shall be according to the following terms and conditions:

1. **Description of Services.** The City will distribute funds to Subrecipient, for use by its Community Assistance Fund (the “Fund”) so that direct emergency financial assistance is provided address emergency individual needs and support vulnerable El Pasoans who have not received timely or sufficient government relief funds to sustain their household and are faced with the possibility of homelessness, hunger and ill health. The City has determined that this Agreement is a necessary expenditure incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) and will help lessen the risk that low-income families who have been affected economically by COVID-19 will take actions that increase their exposure to COVID-19 and exacerbate the public health crisis in the City. The Subrecipient is responsible for ensuring that each actual expenditure of funds addresses emergency individual needs due to the public health emergency with respect to COVID-19 and will help lessen the risk that low-income families who have been affected economically by COVID-19 will take actions that increase their exposure to COVID-19 and exacerbate the public health crisis in the City. The Subrecipient will be responsible for ensuring that the expenditure of funds comply with the CARES Act and the guidance and regulations issued by the United States Department of Treasury (“Treasury Department”); provided, however, the City will immediately inform Subrecipient of any changes to said guidance or regulations issued by the Treasury Department in effect as of the date hereof. The Subrecipient will immediately cease any activities or distribution of funds that the Treasury Department or the City identifies as ineligible expenses. As more fully described in the Agreement, the Subrecipient will be responsible for paying back to the City any funds that were disbursed in violation of the CARES Act or the Treasury Department guidance or regulations that had been provided by the City to Subrecipient; provided, however, Subrecipient shall not be responsible for repayment of funds if such funds were distributed in accordance with Treasury Department guidance and regulations in effect and provided to Subrecipient by the City as of the date of distribution. As of the effective date, the parties agree that the uses and methods allowed in this Program Scope are not prohibited under the CARES Act, guidance or regulations from the Treasury Department, or 2 CFR Part 200.

2. **Outcome Statement.** The goal is to provide gap assistance to at least 1,400 individuals and families at or below 80% area median income (“AMI”) in El Paso, Texas, which is agreed to be as established by the United States Department of Housing and Urban Development.

3. **Beneficiary Qualifications.** Beneficiaries of the services provided hereunder must be (i) a resident of the City of El Paso, (ii) at or below 80% AMI and (iii) suffering from employment or business interruptions due to COVID-19 related business closures or in need of emergency financial assistance to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency. The City recognizes that Subrecipient shall engage with nonprofit advisors, including without limitation, members of the Coalition for the Common Good, to establish a point system for evaluating eligible households and to ensure funds are distributed in accordance with the Agreement.

4. **Eligibility Documentation.** The following documentation is agreed by the City to be acceptable proof of eligibility. The City agrees that the Self-Certification Letter, in the form attached hereto as Exhibit A-1 and made a part hereof (the “Certification Letter”), will be sufficient to determine eligibility for use of funds and under Sections c hereof:

a. Proof of Residency in the City of El Paso.

- i. Valid driver’s license; or
- ii. Government-issued identification card; or
- iii. U.S. or international passport/immigration card **and** current utility bill or cellphone bill with name and address or official government or lending institution correspondence, directly addressed to applicant with applicant’s name and current address; and
- iv. Proof of current address (if identification does not reflect the current address).

b. Household income 30 calendar days prior to application at or below 80% AMI.

- i. Proof of Public Benefits: SSI/SSDI/Disability/Unemployment monthly award letters; or SSA-1099, TANF, SNAP, Gold Card, other (ex., WIC, CHIP etc.); or
- ii. Income Documentation from Every Adult in Household: Copy of 2018 or 2019 tax return; or most recent W-2s; or
- iii. Monthly Wages: Pay stubs 30 calendar days prior to application; or most recent 1099; or letter from employer; or declaration of income statement.

c. Adverse economic impact related to COVID-19. Certification Letter that applicant is suffering from employment interruptions due to COVID-19 business closures, the applicant did not receive stimulus check due to ineligibility and/or did not receive unemployment insurance due to ineligibility or that it will take too long to meet basic needs. Certification Letter will reserve the right to ask for documentation of filed unemployment application, letter of termination, or letter of furlough from employer. Applicant must also include a statement that describes the type of assistance requested.

5. **Form and Method of Assistance.** The Subrecipient will provide emergency financial assistance to individuals and families that meet the qualifications in this Program Scope. The emergency financial assistance provided under this program must be to assist qualified beneficiaries with payment of unforeseen emergency individual needs as a result of COVID-19. The method of assistance will be one-time emergency gap assistance in the form of a limiteduse Mastercard that only allows purchases at grocery stores, supermarkets and pharmacies. This gap assistance can be used for emergency individual needs excluded from other forms of assistance, including without limitation medication, health care, household supplies, school supplies, and transportation. The Subrecipient will obtain the advance written approval from the City before using other forms of assistance, including other gift cards. Based on the case assessment made, an individual or household may receive an amount less than \$1,000. No individual or household will receive more than \$1,000 because a value is placed on helping the most families possible. Subrecipient will obtain the Certification Letter from each grantee, which includes a certification that the funds will not be used other than as provided therein. However, Subrecipient is not required to obtain receipts or other forms of verification from the grantees that moneys disbursed as provided herein have been used as intended. Under no circumstances will the Subrecipient distribute any funds to a beneficiary in the form of direct cash, including direct deposits to bank account.

6. **Distribution of Funds Deadline.** The Subrecipient will expend by November 30, 2020 all funds received by the Subrecipient under this Agreement. Any unexpended funds must be returned to the City within 20 calendar days of November 30, 2020.

7. **Records.** Accounting records required to be maintained in the Subrecipient's files in relation to the requisition for payment under this Agreement include, but are not limited to:

- a. Balance sheet (both monthly and year to date), submitted annually;
- b. Income Statement, as applicable;
- c. General Ledger, as applicable;
- d. Payroll Check Register, as applicable; and
- e. Spreadsheet detailing amounts requested for reimbursement.

Reports shall be submitted to the City in advance of requests for the Second and Final Disbursement.. Other required reports shall be submitted as noted. The City may request reasonable updates at any time and Subrecipient shall provide such updated information within fifteen (15) days of written request for same.

Attachment 3A: Disbursement Request Report

Attachment 3A1: Supporting Worksheet

Attachment 3B: Units of Service [debit cards] Report

Attachment 3D1: Employee Bi-Weekly Time Report

Attachment 3E: Budget Revision Report

Attachment 3F: Units of Service Revision Report

Attachment 3G: Outcomes Report

Failure to achieve the performance target may result in a proportional reduction of the maximum allowable reimbursement. No additional reimbursements will be given for exceeding performance targets of this Agreement. If at any time during the term of this Agreement, Subrecipient's expenditures exceed performance under this Agreement, reimbursements may be withheld by City until such time as the gap between expenditures and performance is closed.

8. **Subrecipient Agreement with Other Providers.** The City acknowledges and agrees that Subrecipient may implement the program through other nonprofit entities experienced with distributing federal funds: to administer the Fund, determine eligibility and process the distributions described in this Project Scope. The City acknowledges that Project BRAVO, Inc. will serve as one of those nonprofit entities. Notwithstanding anything to the contrary, the Subrecipient remains solely responsible to the City for the obligations of Subrecipient as provided in this Agreement.

9. If there is any conflict between this Attachment and the Agreement, then the most stringent terms will govern.

PY 2020

Please enter the requested information into the yellow highlighted cells on each page and sign the Summary Page below

Subrecipient:	
Service Area:	City of El Paso
Allocation: \$ 1,500,000.00	

IMPORTANT! This "Summary Page" will self-populate as you complete each of the worksheets (B.1 - B.9):

BUDGET CATEGORIES	AMOUNT
B.1 Personnel	\$ 38,395.00
B.2 Fringe Benefits	\$ 11,824.00
B.3 Travel	\$ 1,104.00
B.4 Equipment	\$ 2,663.00
B.5 Supplies	\$ 1,030.00
B.6 Contractual	\$ 1,575.00
B.7 Other/B.8 Client Services	\$ 1,428,409.00
B.9 Indirect Costs <small>(If subrecipient has an approved Indirect Cost Rate Agreement from cognizant agency, enter detail on B.9).</small>	\$ 15,000.00
TOTAL BUDGET*	\$ 1,500,000.00

***TOTAL BUDGET" must equal the Allocation above.**

Diff.: \$ -

Subrecipient Approval

--	--

Signature of Preparer

Date

--	--

Signature of Approver

Date

Personnel - B.1

Subrecipient:	0			
Personnel				
Section 1: Administrative and Management Staff				
Identify Job Title NOT staff names	No. of Months	Annual Salary	% of Program Support	Amount Budgeted to Award
Executive Director (1 FTE)	6	\$ 97,843	3.87%	\$ 1,893.00
Chief Financial Officer (1 FTE)	6	\$ 80,954	3.87%	\$ 1,566.00
Chief Programs Officer (1 FTE)	6	\$ 63,856	3.87%	\$ 1,235.00
Human Resources Specialist (1 FTE)	6	\$ 50,398	3.87%	\$ 975.00
IT Coordinator (1 FTE)	6	\$ 47,778	3.87%	\$ 924.00
Executive Assistant (1 FTE)	6	\$ 35,298	3.87%	\$ 683.00
Accounting Technician (2 FTE)	6	\$ 71,469	3.87%	\$ 1,382.00
Custodian (2 FTE)	6	\$ 44,304	3.87%	\$ 857.00
Maintenance Supervisor (1 FTE)	6	\$ 53,726	0.31%	\$ 83.00
Building & WAP Techs (3 FTE)	6	\$ 105,331	0.39%	\$ 204.00
Building Maintenance (1 FTE)	6	\$ 25,064	1.55%	\$ 194.00
Community Services Manager (1 FTE)	6	\$ 58,926	0.23%	\$ 68.00
Community Services Assistant (1 FTE)	6	\$ 32,822	0.23%	\$ 38.00
Receptionist (1 FTE)	6	\$ 21,840	0.12%	\$ 13.00
				\$ -
				\$ -
Subtotal Section 1 (Program ONLY):				\$ 10,115.00
Section 2: Program Staff/Direct Client Support Staff				
Identify Job Title NOT staff names	No. of Months	Annual Salary	% of Program Support	Amount Budgeted to Award
Center Supervisor (4 FTE)	12	\$ 160,493	10%	\$ 16,049.00
Secretary (6 FTE)	6	\$ 131,040	10%	\$ 6,552.00
Community Services Manager (1 FTE)	6	\$ 58,926	10%	\$ 2,946.00
Community Services Assistant (1 FTE)	6	\$ 32,822	10%	\$ 1,641.00
Receptionist (1 FTE)	6	\$ 21,840	10%	\$ 1,092.00
				\$ -
				\$ -
Subtotal Section 2 (Program ONLY):				\$ 28,280.00
Total Section 1 and 2 (Program ONLY):				\$ 38,395.00
Total Personnel Tab				\$ 38,395.00

Fringe - B.2

Subrecipient:	0	
Fringe Benefits		
Section 1: Administrative & Management Staff		
Items		Amount
F.I.C.A		\$ 1,532.00
Unemployment		\$ 14.00
Workman's Comp. Insurance		\$ 33.00
Health Insurance		\$ 2,500.00
Dental Insurance		\$ 115.00
Life Insurance		\$ 50.00
Retirement Contribution		\$ 450.00
Others (List):	ST/LT Disability	\$ 250.00
	Vision	\$ 50.00
Subtotal Section 1 (Program ONLY):		\$ 4,994.00
Section 2: Program Staff/Direct Client Support Staff		
Items		Amount
F.I.C.A		\$ 3,500.00
Unemployment		\$ 50.00
Workman's Comp. Insurance		\$ 115.00
Health Insurance		\$ 850.00
Dental Insurance		\$ 40.00
Life Insurance		\$ 150.00
Retirement Contribution		\$ 1,500.00
Others (List):	ST/LT Disability	\$ 450.00
	Vision	\$ 175.00
Subtotal Section 2 (Program ONLY):		\$ 6,830.00
Total Section 1 and 2 (Program ONLY):		\$ 11,824.00
Total Fringe Benefits Tab		\$ 11,824.00

Travel - B.3

Subrecipient:	0	
Travel		
	Miles	x Fed. Rate*
Local Travel (*Rate cannot be higher than the Federal rate)	1,050	0.58
Per Diem		
Non-Local Travel		
Board Member Reimbursement		
Total Travel Tab		

Travel - B.3

Amount	
\$	604.00
\$	500.00
\$	-
\$	1,104.00

Equipment - B.4

Subrecipient:		0				
Equipment						
Equipment Description	No. of Units	Brand & Model	Unit Cost	Total Cost	% Budgeted to Award	Amount Budgeted to Award
Purchases						
Anticipated hardware replacements (cpu's, printers, anti-virus, monitors, memory, etc.)	1	Various non-capital items	\$20,000.00	\$20,000.00	3.87%	\$ 774.00
				\$0.00		\$ -
				\$0.00		\$ -
				\$0.00		\$ -
				\$0.00		\$ -
				\$0.00		\$ -
				\$0.00		\$ -
				\$0.00		\$ -
				\$0.00		\$ -
				\$0.00		\$ -
Leases						
CAP60 Client software annual support renewal, licenses and modules	1	CAP60	\$31,540.00	\$31,540.00	3.30%	\$ 1,041.00
MIP accounting software annual support	1	Abila	\$4,200.00	\$4,200.00	3.87%	\$ 162.00
Telephone lease	1	Mitel/Intertel Phones	\$10,000.00	\$10,000.00	3.20%	\$ 320.00
Copier lease	2	Xerox copiers	\$5,000.00	\$10,000.00	3.20%	\$ 320.00
Postage meter lease	1	Pitney Bowes	\$1,200.00	\$1,200.00	3.87%	\$ 46.00
				\$0.00		\$ -
				\$0.00		\$ -
				\$0.00		\$ -
				\$0.00		\$ -
				\$0.00		\$ -
Subtotal						\$ 2,663.00
Total Equipment Tab						\$ 2,663.00

Supplies - B.5

Subrecipient:	0
Supplies	
Office Supplies	\$ 650.00
Maintenance Supplies	\$ 280.00
Program Supplies	
Postage	\$ 100.00
Others (List):	
Total Supplies Tab	\$ 1,030.00

Contractual - B.6

Subrecipient:		0		
Contractual				
CSBG Budget Items (Categories)		Total Cost	% Budgeted to Award	Amount Budgeted to Award
Legal Services		\$4,200.00	3.87%	\$ 162.00
Audit Services		\$12,000.00	3.87%	\$ 464.00
Accounting Services				\$ -
Other Costs	ADP Payroll Services	\$12,000.00	3.87%	\$ 464.00
	Document Destruction Services	\$2,200.00	3.87%	\$ 85.00
	Contract labor charges	\$10,000.00	3.87%	\$ 400.00
				\$ -
Subtotal:				\$ 1,575.00
Total Contractual Tab				\$ 1,575.00

Other - B.7

Subrecipient:	0		
Other			
Other Items (such as copying, rent, utilities, phone, insurance, etc.) Itemize below:	Total Costs	% Budgeted to Award	Amount Budgeted to Award
Office Rent	\$121,000.00	4.6%	\$ 5,513.00
Utilities	\$80,000.00	2.2%	\$ 1,795.00
Internet	\$13,750.00	3.7%	\$ 502.00
Telephone	\$60,000.00	4.8%	\$ 2,884.00
Insurance-GL, Auto, D&O	\$56,000.00	1.9%	\$ 1,091.00
Building Repairs & Maintenance	\$43,500.00	2.7%	\$ 1,176.00
Vehicle Repairs & Maintenance	\$630.00	1.3%	\$ 8.00
Vehicle Fuel	\$4,700.00	1.8%	\$ 85.00
Board Meeting Expenses	\$7,150.00	3.3%	\$ 238.00
Equipment Repair & Maintenance	\$575.00	5.8%	\$ 33.00
Local Training/Education	\$10,700.00	1.9%	\$ 202.00
Copier supplies	\$15,500.00	4.6%	\$ 713.00
Dues and Conference Registrations	\$31,000.00	5.4%	\$ 1,659.00
Equipment Licenses & Registrations	\$810.00	1.9%	\$ 15.00
Employment Verification	\$785.00	4.2%	\$ 33.00
Client Outreach	\$3,200.00	2.0%	\$ 63.00
			\$ -
			\$ -
			\$ -
Subtotal for Other Items :			\$ 16,010.00
Total Other Tab			\$ 16,010.00

Client Services - B.7

Subrecipient:	0		
Client Services			
Direct Services		%	
	Total Costs	Budgeted to Award	Amount Budgeted to Award
	\$1,500,000.00		
	94.2%		
	\$1,412,399.00	100.0%	\$ 1,412,399.00
Subtotal for Direct Services TSS & TOP (CSBG):			\$ 1,412,399.00
Total Client Services Tab			\$ 1,412,399.00

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.

ATTACHMENT "D"

Coronavirus Relief Fund Frequently Asked Questions Updated as of May 28, 2020

The following answers to frequently asked questions supplement Treasury's Coronavirus Relief Fund ("Fund") Guidance for State, Territorial, Local, and Tribal Governments, dated April 22, 2020, ("Guidance").¹ Amounts paid from the Fund are subject to the restrictions outlined in the Guidance and set forth in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").

Eligible Expenditures

Are governments required to submit proposed expenditures to Treasury for approval?

No. Governments are responsible for making determinations as to what expenditures are necessary due to the public health emergency with respect to COVID-19 and do not need to submit any proposed expenditures to Treasury.

The Guidance says that funding can be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. How does a government determine whether payroll expenses for a given employee satisfy the "substantially dedicated" condition?

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.

The Guidance says that a cost was not accounted for in the most recently approved budget if the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. What would qualify as a "substantially different use" for purposes of the Fund eligibility?

Costs incurred for a "substantially different use" include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, have been diverted to substantially different functions. This would include, for example, the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures; the costs of redeploying police to support management and enforcement of stay-at-home orders; or the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty's ordinary responsibilities.

Note that a public function does not become a "substantially different use" merely because it is provided from a different location or through a different manner. For example, although developing online instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction.

¹ The Guidance is available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

May a State receiving a payment transfer funds to a local government?

Yes, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act. Such funds would be subject to recoupment by the Treasury Department if they have not been used in a manner consistent with section 601(d) of the Social Security Act.

May a unit of local government receiving a Fund payment transfer funds to another unit of government?

Yes. For example, a county may transfer funds to a city, town, or school district within the county and a county or city may transfer funds to its State, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, a transfer from a county to a constituent city would not be permissible if the funds were intended to be used simply to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify as an eligible expenditure.

Is a Fund payment recipient required to transfer funds to a smaller, constituent unit of government within its borders?

No. For example, a county recipient is not required to transfer funds to smaller cities within the county's borders.

Are recipients required to use other federal funds or seek reimbursement under other federal programs before using Fund payments to satisfy eligible expenses?

No. Recipients may use Fund payments for any expenses eligible under section 601(d) of the Social Security Act outlined in the Guidance. Fund payments are not required to be used as the source of funding of last resort. However, as noted below, recipients may not use payments from the Fund to cover expenditures for which they will receive reimbursement.

Are there prohibitions on combining a transaction supported with Fund payments with other CARES Act funding or COVID-19 relief Federal funding?

Recipients will need to consider the applicable restrictions and limitations of such other sources of funding. In addition, expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds, are not eligible uses of Fund payments.

Are States permitted to use Fund payments to support state unemployment insurance funds generally?

To the extent that the costs incurred by a state unemployment insurance fund are incurred due to the COVID-19 public health emergency, a State may use Fund payments to make payments to its respective state unemployment insurance fund, separate and apart from such State's obligation to the unemployment insurance fund as an employer. This will permit States to use Fund payments to prevent expenses related to the public health emergency from causing their state unemployment insurance funds to become insolvent.

Are recipients permitted to use Fund payments to pay for unemployment insurance costs incurred by the recipient as an employer?

Yes, Fund payments may be used for unemployment insurance costs incurred by the recipient as an employer (for example, as a reimbursing employer) related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

The Guidance states that the Fund may support a “broad range of uses” including payroll expenses for several classes of employees whose services are “substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” What are some examples of types of covered employees?

The Guidance provides examples of broad classes of employees whose payroll expenses would be eligible expenses under the Fund. These classes of employees include public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered. Other eligible expenditures include payroll and benefit costs of educational support staff or faculty responsible for developing online learning capabilities necessary to continue educational instruction in response to COVID-19-related school closures. Please see the Guidance for a discussion of what is meant by an expense that was not accounted for in the budget most recently approved as of March 27, 2020.

In some cases, first responders and critical health care workers that contract COVID-19 are eligible for workers’ compensation coverage. Is the cost of this expanded workers compensation coverage eligible?

Increased workers compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 30, 2020, is an eligible expense.

If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the lease in order to respond to the public health emergency, are the costs associated with continuing to operate the equipment or the ongoing lease payments eligible expenses?

Yes. To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible.

May recipients provide stipends to employees for eligible expenses (for example, a stipend to employees to improve telework capabilities) rather than require employees to incur the eligible cost and submit for reimbursement?

Expenditures paid for with payments from the Fund must be limited to those that are necessary due to the public health emergency. As such, unless the government were to determine that providing assistance in the form of a stipend is an administrative necessity, the government should provide such assistance on a reimbursement basis to ensure as much as possible that funds are used to cover only eligible expenses.

May Fund payments be used for COVID-19 public health emergency recovery planning?

Yes. Expenses associated with conducting a recovery planning project or operating a recovery coordination office would be eligible, if the expenses otherwise meet the criteria set forth in section 601(d) of the Social Security Act outlined in the Guidance.

Are expenses associated with contract tracing eligible?

Yes, expenses associated with contract tracing are eligible.

To what extent may a government use Fund payments to support the operations of private hospitals?

Governments may use Fund payments to support public or private hospitals to the extent that the costs are necessary expenditures incurred due to the COVID-19 public health emergency, but the form such assistance would take may differ. In particular, financial assistance to private hospitals could take the form of a grant or a short-term loan.

May payments from the Fund be used to assist individuals with enrolling in a government benefit program for those who have been laid off due to COVID-19 and thereby lost health insurance?

Yes. To the extent that the relevant government official determines that these expenses are necessary and they meet the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance, these expenses are eligible.

May recipients use Fund payments to facilitate livestock depopulation incurred by producers due to supply chain disruptions?

Yes, to the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency.

Would providing a consumer grant program to prevent eviction and assist in preventing homelessness be considered an eligible expense?

Yes, assuming that the recipient considers the grants to be a necessary expense incurred due to the COVID-19 public health emergency and the grants meet the other requirements for the use of Fund payments under section 601(d) of the Social Security Act outlined in the Guidance. As a general matter, providing assistance to recipients to enable them to meet property tax requirements would not be an eligible use of funds, but exceptions may be made in the case of assistance designed to prevent foreclosures.

May recipients create a “payroll support program” for public employees?

Use of payments from the Fund to cover payroll or benefits expenses of public employees are limited to those employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May recipients use Fund payments to cover employment and training programs for employees that have been furloughed due to the public health emergency?

Yes, this would be an eligible expense if the government determined that the costs of such employment and training programs would be necessary due to the public health emergency.

May recipients use Fund payments to provide emergency financial assistance to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency?

Yes, if a government determines such assistance to be a necessary expenditure. Such assistance could include, for example, a program to assist individuals with payment of overdue rent or mortgage payments to avoid eviction or foreclosure or unforeseen financial costs for funerals and other emergency individual needs. Such assistance should be structured in a manner to ensure as much as possible, within the realm of what is administratively feasible, that such assistance is necessary.

The Guidance provides that eligible expenditures may include expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. What is meant by a “small business,” and is the Guidance intended to refer only to expenditures to cover administrative expenses of such a grant program?

Governments have discretion to determine what payments are necessary. A program that is aimed at assisting small businesses with the costs of business interruption caused by required closures should be tailored to assist those businesses in need of such assistance. The amount of a grant to a small business to reimburse the costs of business interruption caused by required closures would also be an eligible expenditure under section 601(d) of the Social Security Act, as outlined in the Guidance.

The Guidance provides that expenses associated with the provision of economic support in connection with the public health emergency, such as expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures, would constitute eligible expenditures of Fund payments. Would such expenditures be eligible in the absence of a stay-at-home order?

Fund payments may be used for economic support in the absence of a stay-at-home order if such expenditures are determined by the government to be necessary. This may include, for example, a grant program to benefit small businesses that close voluntarily to promote social distancing measures or that are affected by decreased customer demand as a result of the COVID-19 public health emergency.

May Fund payments be used to assist impacted property owners with the payment of their property taxes?

Fund payments may not be used for government revenue replacement, including the provision of assistance to meet tax obligations.

May Fund payments be used to replace foregone utility fees? If not, can Fund payments be used as a direct subsidy payment to all utility account holders?

Fund payments may not be used for government revenue replacement, including the replacement of unpaid utility fees. Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures incurred due to the COVID-19 public health emergency and meet the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, if determined to be a necessary expenditure, a government could provide grants to individuals facing economic hardship to allow them to pay their utility fees and thereby continue to receive essential services.

Could Fund payments be used for capital improvement projects that broadly provide potential economic development in a community?

In general, no. If capital improvement projects are not necessary expenditures incurred due to the COVID-19 public health emergency, then Fund payments may not be used for such projects.

However, Fund payments may be used for the expenses of, for example, establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity or improve mitigation measures, including related construction costs.

The Guidance includes workforce bonuses as an example of ineligible expenses but provides that hazard pay would be eligible if otherwise determined to be a necessary expense. Is there a specific definition of “hazard pay”?

Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19.

The Guidance provides that ineligible expenditures include “[p]ayroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” Is this intended to relate only to public employees?

Yes. This particular nonexclusive example of an ineligible expenditure relates to public employees. A recipient would not be permitted to pay for payroll or benefit expenses of private employees and any financial assistance (such as grants or short-term loans) to private employers are not subject to the restriction that the private employers’ employees must be substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May counties pre-pay with CARES Act funds for expenses such as a one or two-year facility lease, such as to house staff hired in response to COVID-19?

A government should not make prepayments on contracts using payments from the Fund to the extent that doing so would not be consistent with its ordinary course policies and procedures.

Must a stay-at-home order or other public health mandate be in effect in order for a government to provide assistance to small businesses using payments from the Fund?

No. The Guidance provides, as an example of an eligible use of payments from the Fund, expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. Such assistance may be provided using amounts received from the Fund in the absence of a requirement to close businesses if the relevant government determines that such expenditures are necessary in response to the public health emergency.

Should States receiving a payment transfer funds to local governments that did not receive payments directly from Treasury?

Yes, provided that the transferred funds are used by the local government for eligible expenditures under the statute. To facilitate prompt distribution of Title V funds, the CARES Act authorized Treasury to make direct payments to local governments with populations in excess of 500,000, in amounts equal to 45% of the local government's per capita share of the statewide allocation. This statutory structure was based on a recognition that it is more administratively feasible to rely on States, rather than the federal government, to manage the transfer of funds to smaller local governments. Consistent with the needs of all local governments for funding to address the public health emergency, States should transfer funds to local governments with populations of 500,000 or less, using as a benchmark the per capita allocation formula that governs payments to larger local governments. This approach will ensure equitable treatment among local governments of all sizes.

For example, a State received the minimum \$1.25 billion allocation and had one county with a population over 500,000 that received \$250 million directly. The State should distribute 45 percent of the \$1 billion it received, or \$450 million, to local governments within the State with a population of 500,000 or less.

May a State impose restrictions on transfers of funds to local governments?

Yes, to the extent that the restrictions facilitate the State's compliance with the requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance and other applicable requirements such as the Single Audit Act, discussed below. Other restrictions are not permissible.

If a recipient must issue tax anticipation notes (TANs) to make up for tax due date deferrals or revenue shortfalls, are the expenses associated with the issuance eligible uses of Fund payments?

If a government determines that the issuance of TANs is necessary due to the COVID-19 public health emergency, the government may expend payments from the Fund on the accrued interest expense on TANs and unbudgeted administrative and transactional costs, such as necessary payments to advisors and underwriters, associated with the issuance of the TANs.

May recipients use Fund payments to expand rural broadband capacity to assist with distance learning and telework?

Such expenditures would only be permissible if they are necessary for the public health emergency. The cost of projects that would not be expected to increase capacity to a significant extent until the need for distance learning and telework have passed due to this public health emergency would not be necessary due to the public health emergency and thus would not be eligible uses of Fund payments.

Are costs associated with increased solid waste capacity an eligible use of payments from the Fund?

Yes, costs to address increase in solid waste as a result of the public health emergency, such as relates to the disposal of used personal protective equipment, would be an eligible expenditure.

May payments from the Fund be used to cover across-the-board hazard pay for employees working during a state of emergency?

No. The Guidance says that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Hazard pay is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals.

May Fund payments be used for expenditures related to the administration of Fund payments by a State, territorial, local, or Tribal government?

Yes, if the administrative expenses represent an increase over previously budgeted amounts and are limited to what is necessary. For example, a State may expend Fund payments on necessary administrative expenses incurred with respect to a new grant program established to disburse amounts received from the Fund.

May recipients use Fund payments to provide loans?

Yes, if the loans otherwise qualify as eligible expenditures under section 601(d) of the Social Security Act as implemented by the Guidance. Any amounts repaid by the borrower before December 30, 2020, must be either returned to Treasury upon receipt by the unit of government providing the loan or used for another expense that qualifies as an eligible expenditure under section 601(d) of the Social Security Act. Any amounts not repaid by the borrower until after December 30, 2020, must be returned to Treasury upon receipt by the unit of government lending the funds.

May Fund payments be used for expenditures necessary to prepare for a future COVID-19 outbreak?

Fund payments may be used only for expenditures necessary to address the current COVID-19 public health emergency. For example, a State may spend Fund payments to create a reserve of personal protective equipment or develop increased intensive care unit capacity to support regions in its jurisdiction not yet affected, but likely to be impacted by the current COVID-19 pandemic.

Questions Related to Administration of Fund Payments

Do governments have to return unspent funds to Treasury?

Yes. Section 601(f)(2) of the Social Security Act, as added by section 5001(a) of the CARES Act, provides for recoupment by the Department of the Treasury of amounts received from the Fund that have not been used in a manner consistent with section 601(d) of the Social Security Act. If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to the Department of the Treasury.

What records must be kept by governments receiving payment?

A government should keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 601(d) of the Social Security Act.

May recipients deposit Fund payments into interest bearing accounts?

Yes, provided that if recipients separately invest amounts received from the Fund, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses. If a government deposits Fund payments in a government's general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended.

May governments retain assets purchased with payments from the Fund?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds provided by section 601(d) of the Social Security Act.

What rules apply to the proceeds of disposition or sale of assets acquired using payments from the Fund?

If such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Fund provided by section 601(d) of the Social Security Act.

Are Fund payments to State, territorial, local, and tribal governments considered grants?

No. Fund payments made by Treasury to State, territorial, local, and Tribal governments are not considered to be grants but are “other financial assistance” under 2 C.F.R. § 200.40.

Are Fund payments considered federal financial assistance for purposes of the Single Audit Act?

Yes, Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

Are Fund payments subject to other requirements of the Uniform Guidance?

Fund payments are subject to the following requirements in the Uniform Guidance (2 C.F.R. Part 200): 2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

Is there a Catalog of Federal Domestic Assistance (CFDA) number assigned to the Fund?

Yes. The CFDA number assigned to the Fund is 21.019, pending completion of registration.

If a State transfers Fund payments to its political subdivisions, would the transferred funds count toward the subrecipients’ total funding received from the federal government for purposes of the Single Audit Act?

Yes. The Fund payments to subrecipients would count toward the threshold of the Single Audit Act and 2 C.F.R. part 200, subpart F re: audit requirements. Subrecipients are subject to a single audit or program-specific audit pursuant to 2 C.F.R. § 200.501(a) when the subrecipients spend \$750,000 or more in federal awards during their fiscal year.

Are recipients permitted to use payments from the Fund to cover the expenses of an audit conducted under the Single Audit Act?

Yes, such expenses would be eligible expenditures, subject to the limitations set forth in 2 C.F.R. § 200.425.

If a government has transferred funds to another entity, from which entity would the Treasury Department seek to recoup the funds if they have not been used in a manner consistent with section 601(d) of the Social Security Act?

The Treasury Department would seek to recoup the funds from the government that received the payment directly from the Treasury Department. State, territorial, local, and Tribal governments receiving funds from Treasury should ensure that funds transferred to other entities, whether pursuant to a grant program

or otherwise, are used in accordance with section 601(d) of the Social Security Act as implemented in the Guidance.

**Coronavirus Relief Fund
Guidance for State, Territorial, Local, and Tribal Governments
April 22, 2020**

The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act established the Coronavirus Relief Fund (the “Fund”) and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.

The CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.¹

The guidance that follows sets forth the Department of the Treasury’s interpretation of these limitations on the permissible use of Fund payments.

Necessary expenditures incurred due to the public health emergency

The requirement that expenditures be incurred “due to” the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

The statute also specifies that expenditures using Fund payments must be “necessary.” The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

Costs not accounted for in the budget most recently approved as of March 27, 2020

The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget *or* (b) the cost

¹ See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act.

is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The “most recently approved” budget refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020

A cost is “incurred” when the responsible unit of government has expended funds to cover the cost.

Nonexclusive examples of eligible expenditures

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:
 - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
 - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
 - Costs of providing COVID-19 testing, including serological testing.
 - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
 - Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:
 - Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
 - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
 - Expenses for disinfection of public areas and other facilities, *e.g.*, nursing homes, in response to the COVID-19 public health emergency.
 - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
 - Expenses for public safety measures undertaken in response to COVID-19.
 - Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
 - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
 - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
 - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
 - Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
 - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
 - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
 - Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
 - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
 - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Nonexclusive examples of ineligible expenditures²

The following is a list of examples of costs that would *not* be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.³
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

² In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.

³ See 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.

4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

ATTACHMENT “D”

TITLE V—CORONAVIRUS RELIEF FUNDS

SEC. 5001. CORONAVIRUS RELIEF FUND.

(a) IN GENERAL.—The Social Security Act (42 U.S.C. 301 et seq.) is amended by inserting after title V the following:

“TITLE VI—CORONAVIRUS RELIEF FUND

“SEC. 601. CORONAVIRUS RELIEF FUND.

“(a) APPROPRIATION.—

“(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for making payments to States, Tribal governments, and units of local government under this section, \$150,000,000,000 for fiscal year 2020.

“(2) RESERVATION OF FUNDS.—Of the amount appropriated under paragraph (1), the Secretary shall reserve—

“(A) \$3,000,000,000 of such amount for making payments to the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

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“(B) \$8,000,000,000 of such amount for making payments to Tribal governments.

“(b) AUTHORITY TO MAKE PAYMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2), not later than 30 days after the date of enactment of this section, the Secretary shall pay each State and Tribal government, and each unit of local government that meets the condition described in paragraph (2), the amount determined for the State, Tribal government, or unit of local government, for fiscal year 2020 under subsection (c).

“(2) DIRECT PAYMENTS TO UNITS OF LOCAL GOVERNMENT.—

If a unit of local government of a State submits the certification required by subsection (e) for purposes of receiving a direct payment from the Secretary under the authority of this paragraph, the Secretary shall reduce the amount determined for that State by the relative unit of local government population proportion amount described in subsection (c)(5) and pay such amount directly to such unit of local government.

“(c) PAYMENT AMOUNTS.—

“(1) IN GENERAL.—Subject to paragraph (2), the amount paid under this section for fiscal year 2020 to a State that is 1 of the 50 States shall be the amount equal to the relative population proportion amount determined for the State under paragraph (3) for such fiscal year.

“(2) MINIMUM PAYMENT.—

“(A) IN GENERAL.—No State that is 1 of the 50 States shall receive a payment under this section for fiscal year 2020 that is less than \$1,250,000,000.

“(B) PRO RATA ADJUSTMENTS.—The Secretary shall adjust on a pro rata basis the amount of the payments for each of the 50 States determined under this subsection

without regard to this subparagraph to the extent necessary to comply with the requirements of subparagraph (A).

“(3) RELATIVE POPULATION PROPORTION AMOUNT.—For purposes of paragraph (1), the relative population proportion amount determined under this paragraph for a State for fiscal year 2020 is the product of—

“(A) the amount appropriated under paragraph (1) of subsection (a) for fiscal year 2020 that remains after the application of paragraph (2) of that subsection; and

“(B) the relative State population proportion (as defined in paragraph (4)).

“(4) RELATIVE STATE POPULATION PROPORTION DEFINED.—

For purposes of paragraph (3)(B), the term ‘relative State population proportion’ means, with respect to a State, the quotient of—

“(A) the population of the State; and

“(B) the total population of all States (excluding the District of Columbia and territories specified in subsection (a)(2)(A)).

“(5) RELATIVE UNIT OF LOCAL GOVERNMENT POPULATION PROPORTION AMOUNT.—For purposes of subsection (b)(2), the term ‘relative unit of local government population proportion amount’ means, with respect to a unit of local government and a State, the amount equal to the product of—

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“(A) 45 percent of the amount of the payment determined for the State under this subsection (without regard to this paragraph); and

“(B) the amount equal to the quotient of—

“(i) the population of the unit of local government; and

“(ii) the total population of the State in which the unit of local government is located.

“(6) DISTRICT OF COLUMBIA AND TERRITORIES.—The amount paid under this section for fiscal year 2020 to a State that is the District of Columbia or a territory specified in subsection (a)(2)(A) shall be the amount equal to the product of—

“(A) the amount set aside under subsection (a)(2)(A) for such fiscal year; and

“(B) each such District’s and territory’s share of the combined total population of the District of Columbia and all such territories, as determined by the Secretary.

“(7) TRIBAL GOVERNMENTS.—From the amount set aside under subsection (a)(2)(B) for fiscal year 2020, the amount paid under this section for fiscal year 2020 to a Tribal government shall be the amount the Secretary shall determine, in consultation with the Secretary of the Interior and Indian Tribes, that is based on increased expenditures of each such Tribal government (or a tribally-owned entity of such Tribal government) relative to aggregate expenditures in fiscal year 2019 by the Tribal government (or tribally-owned entity) and determined in such manner as the Secretary determines appropriate to ensure that all amounts available under subsection (a)(2)(B) for fiscal year 2020 are distributed to Tribal governments.

“(8) DATA.—For purposes of this subsection, the population

of States and units of local governments shall be determined based on the most recent year for which data are available from the Bureau of the Census.

“(d) USE OF FUNDS.—A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—

“(1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);

“(2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and

“(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

“(e) CERTIFICATION.—In order to receive a payment under this section, a unit of local government shall provide the Secretary with a certification signed by the Chief Executive for the unit of local government that the local government’s proposed uses of the funds are consistent with subsection (d).

“(f) INSPECTOR GENERAL OVERSIGHT; RECOUPMENT.—

“(1) OVERSIGHT AUTHORITY.—The Inspector General of the Department of the Treasury shall conduct monitoring and oversight of the receipt, disbursement, and use of funds made available under this section.

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“(2) RECOUPMENT.—If the Inspector General of the Department of the Treasury determines that a State, Tribal government, or unit of local government has failed to comply with subsection (d), the amount equal to the amount of funds used in violation of such subsection shall be booked as a debt of such entity owed to the Federal Government. Amounts recovered under this subsection shall be deposited into the general fund of the Treasury.

“(3) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Office of the Inspector General of the Department of the Treasury, \$35,000,000 to carry out oversight and recoupment activities under this subsection. Amounts appropriated under the preceding sentence shall remain available until expended.

“(4) AUTHORITY OF INSPECTOR GENERAL.—Nothing in this subsection shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

“(g) DEFINITIONS.—In this section:

“(1) INDIAN TRIBE.—The term ‘Indian Tribe’ has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).

“(2) LOCAL GOVERNMENT.—The term ‘unit of local government’ means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level with a population that exceeds 500,000.

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

“(4) STATE.—The term ‘State’ means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

“(5) TRIBAL GOVERNMENT.—The term ‘Tribal government’ means the recognized governing body of an Indian Tribe.’’.

(b) APPLICATION OF PROVISIONS.—Amounts appropriated for fiscal year 2020 under section 601(a)(1) of the Social Security Act (as added by subsection (a)) shall be subject to the requirements contained in Public Law 116–94 for funds for programs authorized under sections 330 through 340 of the Public Health Service Act (42 U.S.C. 254 through 256).

ATTACHMENT “D”

Nondiscrimination: The Subrecipient, with regard to the work performed by it during the Agreement, and in accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, Section 303 of the Age Discrimination Act, as amended, 42 U.S.C. §6102 Section of the Americans with Disabilities Act, 42 U.S.C. §12132, and Federal Transit Law at 49 U.S.C. §5332, shall not discriminate on the grounds of race, religion, color, creed, sex, age, disability, or national origin in the performance of the Program Scope. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

ATTACHMENT E

STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into on September 1, 2019 by and between the CITY OF EL PASO, TEXAS (“CITY”), as the Covered Entity, and EL PASO COMMUNITY FOUNDATION (“BUSINESS ASSOCIATE”) by and through their duly authorized officials, in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information (“PHI”) and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as “HIPAA”). Covered Entity and Business Associate may be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, CITY has engaged BUSINESS ASSOCIATE to perform services or provide goods, or both;

WHEREAS, CITY possesses individually identifiable health information that is defined in and protected under HIPAA, and is permitted to use or disclose such information only in accordance with HIPAA;

WHEREAS, BUSINESS ASSOCIATE may receive such information from CITY, or create and receive such information on behalf of CITY, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, CITY wishes to ensure that BUSINESS ASSOCIATE will appropriately safeguard individually identifiable health information;

NOW THEREFORE, CITY and BUSINESS ASSOCIATE agree as follows:

A. HIPAA Terms

1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear, or as provided in (1) (h) to this Section.
 - a. **Agreement** shall refer to this document.

- b. **Business Associate** means **EL PASO COMMUNITY FOUNDATION.**
 - c. **HHS Privacy Regulations** shall mean the Code of Federal Regulations (“C.F.R.”) at Title 45, Sections 160 and 164, in effect, or as amended.
 - d. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” is defined in 45 C.F.R. 164.501.
 - e. **Information** shall mean any “health information” provided and/or made available by the CITY to BUSINESS ASSOCIATE, and has the same meaning as the term “health information” as defined by 45 C.F.R. 160.102.
 - f. **Parties** shall mean the CITY and BUSINESS ASSOCIATE.
 - g. **Secretary** shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.
 - h. **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and 164, in effect, or as amended: breach, data aggregation, designated record set, disclosure, health care operations, protected health information, required by law, subcontractor, and use.
2. **Limits on Use and Disclosure Established by Terms of Agreement.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the CITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 164.504(e)(2)(i).)
 3. **Stated Purposes for which BUSINESS ASSOCIATE May Use or Disclose Information.** The Parties hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose Information provided or made available from CITY for the following stated purposes:
To provide public health, research, and related support services (service) to the community of the CITY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 45 C.F.R. 164.504(e) (2) (i); 65 Fed. Reg. 82505.)
 4. **Use of Information for Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and administration of BUSINESS

ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 45 C.F.R. 164.504(e) (4) (i) (A-B)).

5. **Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from CITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:

- a. The disclosure is required by law; or

- b. The BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached. (ref. 45 C.F.R. 164.504(e)(4)(ii)).

6. **Data Aggregation Services.** BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of CITY. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).

7. **BUSINESS ASSOCIATE OBLIGATIONS:**

- a. **Limits on Use and Further Disclosure Established by Agreement and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the CITY shall not be further used or disclosed other than as permitted or required by the Agreement or as required by federal law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).

- b. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)).

- c. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to CITY **within two (2) days of discovery** any use or disclosure of Information not provided for or allowed by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C)).

- d. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that any time Information is provided or made available to any

subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).

- (i) **45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2).** In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such Information.

- e. **Right of Access to Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of Section 181.102 of the Texas Health and Safety Code, requiring that not later than the 15th business day after the date of the receipt of a written request from a person for the person's electronic health record, BUSINESS ASSOCIATE shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form, and with any further requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).

- f. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the CITY, amend or correct protected health information (PHI) in its possession or under its control.

- g. **Amendment and Incorporation of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.504(e)(2)(ii)(F)).

- h. **Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(G)).

- i. **Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the CITY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).
- j. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to adhere to Section B.3. of this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(I)).
- k. **Mitigation Procedures.** BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Agreement or the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(f)).
- l. **Sanction Procedures.** BUSINESS ASSOCIATE agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement of the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(e)(1)).
- m. **Subpart E of 45 C.F.R. Part 164.** To the extent BUSINESS ASSOCIATE is to carry out one or more of CITY'S obligations under Subpart E of 45 C.F.R. Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to CITY in the performance of such obligation(s).
- n. **Prohibition against the Sale of Protected Health Information.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.153, and any amendments of that section.
- o. **Notice and Authorization Required for Electronic Disclosure of PHI.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.154, and any amendments of that section, regarding the requirement of providing notice to an Individual for whom the BUSINESS ASSOCIATE creates or receives protected health information if the Individual's PHI is subject to electronic disclosure.
- p. **State Law on Medical Records Privacy.** The BUSINESS ASSOCIATE shall abide by the requirements set forth in Texas

Health and Safety Code Section 181.001 et. seq., and any amendments of that chapter.

8. **Property Rights.** The Information shall be and remain the property of the CITY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified Information, as a result of this Agreement.
9. **Modifications.** The CITY and BUSINESS ASSOCIATE agree to modify this Business Associate Agreement, in order to comply with Administrative Simplification requirements of HIPAA, as set forth in Title 45, Parts 160 and 164, (Subparts A and E the “Privacy Rule” and Subparts A and C the “Security Rule”) of the Code of Federal Regulations.
10. **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate Agreement shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

B. Term and Termination

1. **Term.** The Term of this Agreement shall be effective as of September 1, 2019, and shall terminate on August 31, 2020 or on the date covered entity terminates for cause as authorized in paragraph (B.2.) of this Section, whichever is sooner.
2. **Termination for Cause.** Upon the CITY’s knowledge of a material breach by BUSINESS ASSOCIATE, the CITY shall:
 - a. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by the CITY.
 - b. Immediately terminate the Business Associate Agreement if BUSINESS ASSOCIATE has breached a material term of this Business Associate Agreement and cure is not possible.
 - c. Notify the Secretary of HHS if termination is not possible.
3. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, BUSINESS ASSOCIATE, with respect to protected health information received from CITY, or created, maintained, or received by BUSINESS ASSOCIATE on behalf of CITY, shall:

- a. Retain only that protected health information which is necessary for BUSINESS ASSOCIATE to continue its proper management and administration or to carry out its legal responsibilities;
- b. Return to CITY, or, if agreed to by CITY, destroy, the remaining protected health information that the BUSINESS ASSOCIATE still maintains in any form and BUSINESS ASSOCIATE shall certify to the CITY that the Information has been destroyed;
- c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as BUSINESS ASSOCIATE retains the protected health information;
- d. Not use or disclose the protected health information retained by BUSINESS ASSOCIATE other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section 1.e and 1.f above, which applied prior to termination; and
- e. Return to CITY or, if agreed to by CITY, destroy, the protected health information retained by BUSINESS ASSOCIATE when it is no longer needed by BUSINESS ASSOCIATE for its proper management and administration or to carry out its legal responsibilities.
- f. Survival. The obligations of BUSINESS ASSOCIATE under this Section shall survive the termination of this Agreement.

C. Remedies. If CITY determines that BUSINESS ASSOCIATE has breached or violated a material term of this Agreement, CITY may, at its option, pursue any and all of the following remedies:

- 1. Exercise any of its rights of access and inspection under Section A.7.e. of this Agreement;
- 2. Take any other reasonable steps that CITY, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
- 3. Terminate this Agreement immediately.
- 4. Injunction. CITY and BUSINESS ASSOCIATE agree that any violation of the provisions of this Agreement may cause irreparable harm to CITY. Accordingly, in addition to any other remedies available to CITY at law, in equity, or under this Agreement, in the event of any violation by BUSINESS

ASSOCIATE of any of the provisions of this Agreement, or any explicit threat thereof, CITY shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section C.4. shall survive termination of the Agreement.

5. **INDEMNIFICATION. BUSINESS ASSOCIATE SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, COSTS AND OTHER EXPENSES RESULTING FROM, OR RELATING TO, THE ACTS OR OMISSIONS OF BUSINESS ASSOCIATE IN CONNECTION WITH THE REPRESENTATIONS, DUTIES AND OBLIGATIONS OF BUSINESS ASSOCIATE UNDER THIS AGREEMENT. THE PARTIES' RESPECTIVE RIGHTS AND OBLIGATIONS UNDER THIS SECTION 5 SHALL SURVIVE TERMINATION OF THE AGREEMENT.**

D. Miscellaneous

1. **Regulatory References.** A reference in this Agreement to a HIPAA section means the section as in effect or as amended.
2. **Amendment.** CITY and BUSINESS ASSOCIATE agree that amendment of this Agreement may be required to ensure that CITY and BUSINESS ASSOCIATE comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of protected health information. CITY may terminate this Agreement upon 60 days written notice in the event that BUSINESS ASSOCIATE does not promptly enter into an amendment that CITY, in its sole discretion, deems sufficient to ensure that CITY will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between the parties and signed by duly authorized representatives of both parties.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.
4. **Notices.** Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party.

CITY: City of El Paso

Community and Human Development Department
Attention: Grants and Program Administration
801 Texas Ave., 3rd Floor
El Paso, Texas 79901

COPY TO: City of El Paso
Attn: City Manager
300 N. Campbell
El Paso, Texas 79901

BUSINESS ASSOCIATE: **EL PASO COMMUNITY FOUNDATION**
Attn: Richard Eric Pearson, President/CEO
333 n. Oregon, 2nd Floor
El Paso, Texas 79901

5. **Non-Waiver.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
6. **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
7. **Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws, with venue in El Paso County, Texas.
8. **Compliance with Laws.** BUSINESS ASSOCIATE agrees that its obligations pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, BUSINESS ASSOCIATE reserves the right to notify CITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
9. **Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other

provision; the remaining provisions will be deemed to continue in full force and effect.

10. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than CITY and BUSINESS ASSOCIATE, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
11. **Entire Agreement; Counterparts.** This Agreement constitutes the entire Agreement between CITY and BUSINESS ASSOCIATE regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.

(Signatures follow on next page)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

Signature Page

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the _____ day of _____, 20____.

CITY OF EL PASO

Tomás González
City Manager

**BUSINESS ASSOCIATE:
EL PASO COMMUNITY FOUNDATION**

Signature: _____
Name Printed: _____
Title: _____

APPROVED AS TO FORM:

Omar De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:

Nicole Ferrini, Director
Community and Human Development