

THE STATE OF TEXAS) SUBRECIPIENT AGREEMENT
)
COUNTY OF EL PASO)

This Subrecipient Agreement (“**Agreement**”) is made on _____, 2020 (“**Effective Date**”) and is between the County of El Paso, a political subdivision of the State of Texas (the “**County**”) and the El Pasoans Fighting Hunger Food Bank, a Texas nonprofit corporation (“**Subrecipient**”). Subrecipient and County may be referred to singularly as a “Party” or collectively as “Parties.” The Parties agree to all the recitals, terms, conditions, and representations contained in this Agreement.

WHEREAS, Coronavirus Disease 2019 (“COVID 19) is a virus identified as the cause of an outbreak of respiratory illness detected in the United States; and

WHEREAS, by March 13, 2020, after the Centers for Disease Control affirmed COVID-19 as a global pandemic, the President of the United States, the Governor of Texas and both the El Paso County Judge and Mayor of El Paso locally, declared the COVID-19 pandemic as a disaster in their respective overlapping jurisdictions; and

WHEREAS, by the end of March, 2020 the Governor of Texas, both the El Paso County judge and Mayor of El Paso locally, further ordered, 1) all persons to maintain a distance of six feet from all other persons not living in the same dwelling; 2) all persons to remain at home unless it is necessary to conduct essential business like purchasing groceries or medicines and obtaining other essential services like banking and home repair; and 3) all non-essential businesses to close to avoid gatherings of more than ten people within six feet of one another, like restaurants, bars, sporting arenas, movie theaters.

WHEREAS, these orders, while having a positive effect of slowing the rate of transmission of COVID-19, adversely affected businesses and the workforce in El Paso County. For some that meant business and living expenses would continue to mount up without any revenue, income or wages to pay them; and

WHEREAS, within a very short timeframe, the local food banks throughout the state of Texas reported extremely large increases in requests for food and other assistance; and

WHEREAS, COVID-19 has created both a public emergency and a public exigency for those required to close businesses, stop working, and remain at home to avoid spread of the COVID-19 virus. Many of those remaining at home to deter the spread of COVID-19 have lost part of their income; others have lost not only their jobs but also the ability to seek other employment. These events may become an emergency if they result in inadequate funds for food, medicine, rent, utilities and other necessary items; and

WHEREAS, the County 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, because of the large insertion of funding and a short time-frame for planning how to distribute the funds, setting up the criteria for distribution and implementing the plan, the County sought the assistance from the Subrecipient that has implemented such operations for previous disasters and has the infrastructure for the distribution of emergency food assistance to eligible County residents. This is especially so due to the various agencies with differing requirements related to what funds may be used for, how the local government may obtain needed assistance in distribution of the funds, and differing accounting requirements related to its use; and

WHEREAS, the County intends to forgo a competitive procurement as justified pursuant to 2 C.F.R. § 200.320(f) because the competitive solicitation requirement will cause unnecessary delay. Waiting for the completion of a competitive procurement would greatly increase the time to respond to the urgent needs of the residents for assistance and the need for instant new government programs. A noncompetitive procurement to provide assistance to those suffering from the secondary effects of this infection on the community at large, which are devastating the finances and health and safety of the entire population of the region is appropriate; 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 County 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 1, 2020.

WHEREAS, the County finds that the expenditures under this Agreement are incurred due to the public health emergency and to provide economic support to El Paso County residents that are suffering from employment or business interruptions due to COVID-19 related business closures; and

WHEREAS, the County finds that the funds distributed under the Program Scope of this Agreement, attached hereto as Attachment A and made a part hereof for all purposes (the “**Program Scope**”) are necessary expenditures to address emergency individual needs in the reasonable judgment of the County and are consistent with the CARES Act; and

WHEREAS, the provisions in this Agreement ensure that the Program Scope maintains the 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 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 follows the requirements of the Granting Agency regarding emergency financial assistance.
The Parties agree as follows:

1. **Funding Amount. Payments by County.** Subrecipient will be reimbursed for Allowable Expenses in five distributions each not to exceed 20% of available funds or \$100,000. Total available funds is \$500,000. Subrecipient shall submit requests for reimbursement of Allowable Expenses along with supporting documentation no later than the first day of each month, for five consecutive months, beginning July 1, 2020. Distributions shall be made to Subrecipient within ten business days from receipt of reimbursement request and supporting documentation. Payment will be made on the expectation 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.
2. **Allowable Expenses.** This is a cost reimbursement agreement. Reimbursement of funds under this Agreement may be requested only for necessary, reasonable, and allowable costs described in the budget ("Program Budget") attached hereto and incorporated herein as **Exhibit "B,"** and for which Subrecipient has made payment. Allowable Expenses will be approved by the County 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 only those expenses eligible for reimbursement under Section 5001 of the CARES Act attached herein as **Exhibit "H,"** requirements of 2 CFR 200, OMB Requirements, Program Funding Requirements, and Granting Agency Requirements, applicable to the Program Funding and/or requirements by the Granting Agency. **ALLOWABLE EXPENSES ARE ONLY EXPENSES 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 SUBRECIPIENT'S BUDGET APPROVED AS OF MARCH 27, 2020; AND 3) WERE INCURRED**

DURING THE PERIOD THAT BEGINS ON MARCH 1, 2020, AND ENDS ON DECEMBER 1, 2020. Subrecipient acknowledges and agrees that Allowable Expenses may change over time in accordance to Granting Agency clarifications and regulations. The County 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 County for any questions regarding what expenses constitute Allowable Expenses. The County may withhold any 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 County 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 3 hereof.

3. **Program Scope**. Subrecipient will comply with all the requirements and deadlines described in the Program Scope. The Subrecipient will be responsible for repaying the County 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 3 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 County 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 County, 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 County 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.

4. **Term.** Unless terminated sooner as allowed under this Agreement, this Agreement commences on the Effective Date and terminates December 30, 2020.
5. **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 items set forth in the Program Budget are hereby accepted as Allowable Expenses and shall be used in accordance with the Program Scope. The County shall immediately notify Subrecipient if any item provided in the Program Budget is no longer acceptable as an Allowable Expense. The Subrecipient will obtain the advance written 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 County determines that unexpended funds are present, then the County may adjust the Sub-grant Amount to remove such amounts at the County’s discretion.
6. **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.
 - a. Commercial Liability Insurance in the minimum amounts of \$1,000,000 per occurrence for bodily injury, wrongful death and property damage. Subrecipient will provide liability insurance that provides railroad protective liability insurance in the amount of \$1,000,000 Bodily Injury and/or 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 County 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 County 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 County may reject an issuer of an insurance policy in the County’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 County, 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 County proof of compliance with all insurance requirements in this Agreement. Proof provided by the Subrecipient to the County must be in the form of a certificate of insurance accompanied by all endorsements. Following a written request by the County, the Subrecipient will provide the County a complete copy of all insurance policies required under this Agreement.
7. **Indemnification.** TO THE EXTENT ALLOWED BY LAW AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT THE SUBRECIPIENT WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE COUNTY AND THE COUNTY'S OFFICERS AND EMPLOYEES FROM ALL CLAIMS OF PROPERTY DAMAGE, PROPERTY LOSS, PERSONAL INJURY, DEATH, ILLNESS, INTELLECTUAL 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.
8. **Release.** To the extent allowed by law, the Subrecipient releases the County and the County'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.
9. **Damage to County Property.** The Subrecipient will pay the costs of repairing any damages to County 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 County.
10. **Termination.**
 - a. Non-Appropriation of Funds by the County. If the County fails to appropriate sufficient funds to carry out the obligations of the County under this Agreement, then the County may terminate this Agreement upon 30 calendar day notice to the Subrecipient.
 - b. 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 County terminates this Agreement for cause, then the Subrecipient will pay back to the County all funds disbursed by the County to the Subrecipient under this Agreement but only to the extent provided in Section 2 hereof.

- c. The Subrecipient may terminate this Agreement by sending to the County 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 County determines in the case of partial termination that the reduced or modified portion of the Sub-grant Amount will not accomplish the purposes for which the federal award was made, the County may terminate the Sub-Grant Amount in its entirety.
- d. 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. This close-out period may extend beyond the term of this agreement.

11. Audit and Inspections.

- a. Subrecipient will keep all records related to this Agreement for a period of three years after December 30, 2020. Until termination of this Agreement, Subrecipient will allow the County, the Granting Agency, federal Inspectors General, and/or the Comptroller of the United States to inspect all records reasonably related to this Agreement within three 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. Subrecipient shall maintain appropriate records for the periods required by law to provide accountability for all expenditures of grant funds, reporting measures, and funds received from County under this Agreement. Records maintained by the Subrecipient will, at a minimum, identify the supporting documentation prepared by the County to permit an audit of its accounting systems and payment verification with respect to the expenditure of any funds awarded under this Agreement.
- b. Subrecipient shall comply with 2 CFR part 200 Subpart F – Audits. In accordance with 2 CFR §200.510, Subrecipient shall prepare financial statements and a schedule of expenditures of federal awards. Subrecipient shall provide the County with its annual financial statement within ninety (90) days of the end of Subrecipient's operating year. This financial statement shall be prepared by an actively licensed public accountant.
- c. In addition, if expending more than \$750,000 of Federal awards during an operating year, from any Federal source, Subrecipient shall comply with the audit provisions contained in 2 CFR subpart F and the Single Audit Act Amendments of 1996 (31 U.S.C. §§7501-7507). Subrecipient shall submit its annual audit to the County and within one hundred twenty (120) days of the end of Subrecipient's fiscal year in which available funds were spent by Subrecipient pursuant to this Agreement. Subrecipient must clear any deficiencies noted in the audit reports within 30 days

after receipt of any noted deficiencies. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not expended in accordance with the conditions of this Agreement, Subrecipient shall be held liable for reimbursement to the County of all funds not expended in accordance with those regulations and Agreement provisions within thirty (30) days after County has notified Subrecipient of such non-compliance. Any reimbursement by Subrecipient shall not preclude the County from taking any other action or pursuing other remedies. Failure to comply with these audit requirements constitutes a violation of the Agreement and may result in the withholding of future payments. If Subrecipient expends less than \$750,000 in federal awards during its fiscal year, they are exempt from this requirement, except as noted in 2 CFR §200.503, but records must be available for review or audit.

12. **Liability for Funds.** The Subrecipient will repay the County 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.
13. **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 F 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 County must also comply with the OMB requirements and the County 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 County that are necessary to ensure that the County complies with the OMB requirements. 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 that are necessary to ensure that the County complies with Program Fund Requirements.
14. **Monitoring.** The Subrecipient will allow the County reasonable access to inspect the Subrecipient’s Offices and facilities subject of this Agreement to ensure compliance with local, state, and federal requirements. The County will provide the Subrecipient reasonable notice prior to a visit. Following a visit the County may provide the Subrecipient with a report regarding the findings of the visit. If the County provides the Subrecipient with a report, then the Subrecipient will correct any findings and provide a written response to the County addressing the County’s findings.

15. **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 County 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 County any funds that are determined to be disallowed costs even if performance obligations or work has been completed.
16. **Reversion of Assets.** The Subrecipient will transfer to the County any funds at hand at the time of expiration or termination of this Agreement. The Subrecipient will transfer such funds within ten calendar days of the expiration or termination of the Agreement.
17. **Representations and Warranties.** The Subrecipient represents and warrants that all information submitted to the County, 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 name, a copy of the "Assumed Name Certificate" filed with the El Paso County Clerk shall be submitted to the County 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 County 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 County. The Subrecipient also represents and warrants that any requests for reimbursement submitted by the Subrecipient to the County 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, and (ii) expenses that have been incurred during the period that begins on March 1, 2020 and ends on December 1, 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" - Required Subrecipient Information

- d. Attachment "D" - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- e. Attachment "E" – Certification for Disclosure of Lobbying Activities
- f. Attachment "F" - 2 CFR Part 200, Appendix II, Contract Requirements
- g. Attachment "G" – CARES Act, Section 5001 – Coronavirus Relief Fund
- h. Attachment "H" – U.S. Dept. of Treasury Coronavirus Relief Fund Guidance

19. **Copyrights, Licenses, and Patents.** If this Contract results in a copyrightable material, the County’s approval must be obtained to copyright the work. Additionally, the County 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 County 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 County.
- b. **Definitions.** A defined term under this Agreement appears in **bold face** print when first defined.
- 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. 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 any manner with the performance of the services under this Agreement and that none of its paid personnel shall be employees of the County or have any contractual relationship with the County.
- 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 County 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 County a list of its current membership and board of directors with their appropriate titles. The County 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 County is not subject to any obligations or liabilities of the Subrecipient incurred in the performance of this Agreement.
- g. Confidentiality. The County 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 County 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 County 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 three calendar days following the postmark date on the notice.

To the County: COUNTY OF EL PASO
Attn: Ricardo A. Samaniego, County Judge
500 E. San Antonio
El Paso, Texas 79901

With a Copy to: Irene G. Valenzuela, Executive Director
Community Services Department
6314 Delta Drive
El Paso, Texas 79905

Subrecipient: El Pasoans Fighting Hunger Food Bank
Attn: Susan Goodell, Chief Executive Officer
9541 Plaza Circle
El Paso, Texas 79927
Tel.: 915.298.0353
Email: sgoodell@epfhfb.org

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 County 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 County is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The Parties also agree that the County 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 OF PARTIES ON NEXT PAGE]

2020-0454

For Internal use only

Program Year:

Program Name:

Grant Type:

CFDA#:


Matter # / Document # / Subrecipient Name / Attorney Initials

[Signature page for the County of El Paso]

COUNTY OF EL PASO:

Ricardo A. Samaniego
County Judge

APPROVED AS TO FORM:



Ryan B. Kerr
Assistant County Attorney

APPROVED AS TO CONTENT:

Irene G. Valenzuela, Executive Director
Community Services Department

Acknowledgment

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 2020,
by **Ricardo A. Samaniego**, as **County Judge** of the **County of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

[Signature page for Subrecipient]

SUBRECIPIENT:

Name: Susan Goodell
Title: Chief Executive Officer

Acknowledgment

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this ____ day of _____, 2020,
by Susan Goodell, as Chief Executive Officer of El Pasoans Fighting Hunger Food Bank.

Notary Public, State of Texas

My commission expires:

**ATTACHMENT “A”
Program Scope**

Subrecipient: **El Pasoans Fighting Hunger Food Bank**
9541 Plaza Circle
El Paso, Texas 79927

This Program Scope is attached to and made a part of the Subrecipient Agreement (the “Agreement”) between the County of El Paso (the “County”) and Subrecipient dated June __, 2020 and shall be according to the following terms and conditions:

SCOPE

The County seeks to engage El Pasoans Fighting Hunger Food Bank (“Subrecipient”) to support the County to distribute food to County residents in response to the COVID-19 crisis. Specifically, the purpose for this collaboration of services between the Subrecipient and the County is to provide support to assist the Subrecipient in maintaining services and providing supplies to County residents in need in order to reduce food insecurity which could lead to additional exposure to disease as well as control the risk and prevent the spread of the virus.

ROLES AND RESPONSIBILITIES:

The County agrees to support this process as follows:

- a. Subrecipient will be reimbursed for Allowable Expenses in five distributions each not to exceed 20% of available funds or \$100,000. Total available funds is \$500,000. Subrecipient shall submit requests for reimbursement of Allowable Expenses along with supporting documentation no later than the first day of each month, for five consecutive months, beginning July 1, 2020. Distributions shall be made to Subrecipient within ten business days from receipt of reimbursement request and supporting documentation.

In turn, Subrecipient agrees to support this process as follows:

- a. Establish a full-time mega food distribution site in an east County location outside the city limits of The City of El Paso that is acceptable to both Subrecipient and County staff and accessible to County residents for food distribution daily.
- b. Provide access to County residents in need to food assistance at all mega and food pantry sites.
- c. Activate and deploy mobile and/or brick and mortar food pantry distribution sites in at least three County locations outside the City limits of The City of El Paso to provide food staples to County residents, deliver food to these sites at least once per week, and coordinate specific food packages with County employees.
- d. Track the amount of food provided to County residents from all mega-sites as well as County mobile food pantries and report to the County weekly, quantifying the amount of

food and approximate number of non-City of El Paso residents who are assisted in El Paso County. In lieu of providing statistics on the entire population, the food bank may sample a selection of no fewer than 100 **randomly** chosen residents from each of their four mega sites to provide sample statistics representative of the entire population served by Subrecipient.

- e. Provide comprehensive updates by August 1, 2020, and October 1, 2020, to the County regarding the progress and performance of the requirements herein.
- f. Subrecipient will perform in a good and workmanlike manner and at a standard equal to or better than the standard for professionals in its area of work and expertise.
- g. Subrecipient agrees any data provided by the County as well as deliverables and work product resulting from these services belong to the County.
- h. Subrecipient will fully comply with all Federal, State and Local laws, regulations and guidance regarding proper responses to the current COVID-19 crisis.

Monitoring and Evaluation

Subrecipient will utilize appropriate databases to track clients who seek services from the Subrecipient. Subrecipient will provide the following metrics on its reports to the County that track and contain:

- Number of pounds of food served at the out-County mega site
- Number of non-city households/cars served at the out-County mega site
- Number of non-city people served at the out-County mega site
- Number of pounds of food served at the out-County mobile/brick and mortar pantry sites
- Number of people served at the out-County mobile/brick and mortar pantry sites
- Number of non-city households/cars served at the four City mega food distribution sites

Upon the request of the County, Subrecipient will provide more frequent or additional reports and information.

**ATTACHMENT “B”
Program Budget**

**County of El Paso
COVID Cares Act Funding Program Budget**

Expenses	Rationale	Cost
Transportation Costs	This includes vehicle fuel & oil, repair, maintenance, insurance, licenses, inspections and leases as needed to acquire and distribute food	\$ 100,000.00
Personnel Costs	This includes wages, payroll taxes, benefits, workers compensation, temp fees for all staff involved in the acquisition and distribution of food	\$ 150,000.00
Warehouse Supplies	To include the cost of supplies needed in the acquisition and distribution of food such as purchase of boxes, shrink wrap, tape, etc.	\$ 100,000.00
Food Acquisition Costs	To include freight, purchased food, food solicitation, etc.	\$ 50,000.00
Facility Expenses	This includes utilities, insurance, cleaning supplies, maintenance supplies, etc.	\$ 100,000.00
		\$ 500,000.00

EXHIBIT "C"

REQUIRED SUBRECIPIENT INFORMATION

1. Subrecipient name (which must match registered name in DUNS):
2. Subrecipient's DUNS number (see §200.32 Data Universal Numbering System (DUNS) number):
3. Federal Award Identification Number (FAIN): _____
4. Federal Award Date (see §200.39 Federal award date): _____
5. Subaward Period of Performance Start Date and End Date: to
6. Amount of Federal Funds Obligated by this Agreement: \$
7. Total Amount of Federal Funds obligated to subrecipient for this activity under all agreements between the County and the Subrecipient, including this Agreement: \$
8. Total Amount of the Federal Award: \$
9. Total Amount of the Federal Award committed to the Subrecipient: \$
10. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA):_____.
11. Name of Federal awarding agency, pass-through entity, and contact information for awarding official: U.S. Department of the Treasury; and the County of El Paso. Contact information for the awarding official at the County of El Paso: ATTN: Betsy Keller, El Paso County Chief Administrator, County of El Paso, 500 E. San Antonio Ave., El Paso, Texas 79902; (ph) 915-546-2215.
12. CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award the CFDA number at the time of disbursement:
13. Identification of whether the award is R&D: N/A
14. Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A costs)): de minimis rate

EXHIBIT "D"

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION**

It is certified that neither the below-identified entity nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Name of Entity: _____

By: _____ Date: _____
Authorized Signature

Title: _____

Instructions for Certification:

1. By signing and submitting this certification, the Entity (referred to hereinafter as Subrecipient) is providing the certification set out above.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Subrecipient knowingly rendered an erroneous certification, in addition to other remedies available to the federal government and the County may pursue available remedies, including suspension and/or debarment.
3. The Subrecipient shall provide immediate written notice to the person to which this proposal is submitted if, at any time, the Subrecipient learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this certification is being submitted for assistance in obtaining a copy of those regulations.
5. The Subrecipient agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered

transaction with a person who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The Subrecipient further agrees by submitting this certification that it will include this certification clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, proposed for debarment, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant are not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is debarred, suspended, proposed for debarment, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government and the County may pursue available remedies, including suspension and/or debarment.

EXHIBIT "E"

CERTIFICATION FOR DISCLOSURE OF LOBBYING ACTIVITIES

The Subrecipient certifies, by signing this certification, that to the best of his or her knowledge and belief:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Subrecipient also agrees by submitting this certification that he or she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Name of Entity: _____

By: _____

Date: _____

Authorized Signature

Title: _____

ATTACHMENT “F”

2 CFR Part 200, Appendix II, Contract Requirements

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 of \$100,000 or more 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 “G”

CARES Act, Section 5001 – Coronavirus Relief Fund

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 H. R. 748—222

“(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— H. R. 748—223

“(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. H. R. 748—224

“(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 “H”

U.S. Dept. of Treasury Coronavirus Relief Fund Guidance

[NOTE TO ATTACHMENT “H”: TREASURY GUIDANCE IS SUBJECT TO CHANGE BY THE UNITED STATES GOVERNMENT. ANY CHANGES TO THE GUIDANCE WILL BE TREATED AS PART OF THIS AGREEMENT, BUT ONLY AS OF THE DATE OF SUCH CHANGE IN 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.

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

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 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.
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.

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.