

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF DURHAM AND DURHAM COUNTY
TO USE AMERICAN RESCUE PLAN ACT (ARPA) FUNDS TO SUPPORT CULTURE
AND ARTS RECOVERY EFFORTS**

THIS INTERLOCAL AGREEMENT is entered into by the **CITY OF DURHAM**, a municipal corporation organized and existing under the laws of the State of North Carolina (City) and the **COUNTY OF DURHAM**, a political subdivision of the State of North Carolina, (County) together collectively the CITY and the COUNTY may be referred to as the “Parties.” This Agreement shall be effective on the _____ day of _____, 2024(Effective Date).

BACKGROUND

- A. On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by President Biden. ARPA, a \$1.9 trillion nationwide investment, established the Coronavirus State and Local Fiscal Recovery Fund (SLFRF). This fund provided \$350 billion to state, local, territorial, and Tribal governments nationwide for COVID-19 pandemic recovery assistance. Durham County was allocated \$62,445,275 to support pandemic recovery efforts through 2024. The City of Durham was allocated \$51,881,733 under SLFRF for pandemic recovery efforts during the same period.
- B. Under Federal laws and regulations, State and local governments are permitted to use SLFRF funds for several categories of expenditures, including for programs that are aimed at responding to and mitigating the negative economic impacts of the COVID-19 pandemic.
- C. Durham County’s culture and arts sector is a key economic driver and contributor to making Durham a vibrant, successful community and an attractive environment for investment. Based on data from the Durham Arts Council, Durham’s non-profit cultural and arts sector contributes over \$230 million annually to Durham County’s economy, support over 3,000 jobs, and provides more than 2 million cultural and/or arts experiences for citizens and visitors each year. However, this sector was significantly impacted by the COVID-19 pandemic; surveys conducted by the Durham Arts Council showed that, collectively, revenue losses in this sector exceeded more than \$21 million during the height of the pandemic. While recovery has started for the culture and arts sector since 2022, the sector has still not fully regained its pre-pandemic status and capacity, highlighting the need for further investment to help boost recovery from the pandemic’s negative economic impacts.
- D. On November 21, 2022, the Durham City Council approved an initial subgrant award from its SLFRF funding to the Durham Arts Council to support grant programs aimed at bolstering the recovery of organizations, venues, and independent artists operating within Durham’s culture and arts sector.
- E. In order to further support the recovery of the Culture and Arts sectors in Durham County from the negative economic impacts of the pandemic, Durham County, by way of this Interlocal Cooperation Agreement, will convey funds from the County’s SLFRF grant award not to exceed \$1,000,000 to the City of Durham, which the City of Durham will

subsequently utilize to provide grants and other supports to bolster the recovery of the Culture and Arts sector in the Durham community.

- F. From the \$1,000,000 provided to the City pursuant to this agreement, the City will reserve \$800,000 to be used to partner with the Durham Arts Council and the Hayti Heritage Center/St. Joseph's Historic Foundation to support the development of minority owned businesses and organizations operating in the culture and arts sector in the Hayti community. The remaining \$200,000 will be used to support recommendations included in the Durham Cultural Arts Plan update, which the City of Durham and Durham County jointly sponsor, including support for small businesses operating in the cultural and arts sector.
- G. Through this agreement, the City of Durham and Durham County are affirming their desire to support the Culture and Arts sector in reversing the COVID-19 pandemic's negative economic impacts and revenue loss. The funding provided through this agreement will be utilized to support large and small local arts and cultural nonprofits, businesses, venues, and independent artists through grants, training, planning, and marketing initiatives to help restore jobs, reopen venues, and restart programming. The proposed initiatives will restore and stabilize with special emphasis on ensuring equity across all grant funding categories.
- H. This Agreement is made as an Interlocal Cooperation Agreement (ILCA) pursuant to the General Statutes of North Carolina at Chapter 160A, Article 20, Part 1.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1 PURPOSE

The purpose of this interlocal agreement is to establish the expectations for Durham County's financial contribution to the City of Durham to support the City's SLFRF Culture and Arts Program.

ARTICLE 2 TERM AND TERMINATION

- A. Term.** The initial term of this Agreement shall be from the effective date until December 31, 2026, unless terminated pursuant to this Article.
- B. Termination.** The Parties agree that each Party may, without cause and in its discretion, terminate this contract for convenience by giving the other Party written notice of the termination, which shall be effective at the time indicated in the notice.

ARTICLE 3 COUNTY AGREEMENTS

The County agrees to convey its financial contribution in an amount not to exceed \$1,000,000 (the "County Funds") to City of Durham within 30 days of the execution of the agreement.

ARTICLE 4

CITY AGREEMENTS

The City agrees to contribute the County Funds to expand its existing programs for supporting Culture and Arts in the Durham Community. The City will provide an accounting or proof of this contribution to the County upon reasonable request.

As the County Funds provided comprise a portion of the County's federal SLFRF grant award, the City agrees to ensure that all funds provided pursuant to this agreement are managed in accordance with all applicable Federal requirements, including U.S. Treasury rules and requirements pertaining to the use of SLFRF funds, as well as the Uniform Administrative Requirements, Cost Principles, and Audit Requirements (2 C.F.R 200 et. al.).

ARTICLE 5 MISCELLANEOUS

The Parties agree:

- A. Headings.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.
- B. Governing Law.** This Agreement shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Agreement shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
- C. Amendments.** No modification or amendments of this Agreement will be valid or binding upon any Party unless in writing and signed by the Party against whom the modification or amendment is asserted.
- D. Entire Agreement.** This Agreement, including any attachments shall constitute the entire understanding between the Parties and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.
- E. E-Verify.** The Parties agree that this Agreement is subject to the E-Verify requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and any contractor, subcontractor performing services because of this Agreement shall be required to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
- F. No Third-Party Rights Created.** This contract is intended for the benefit of the City and the County and not any other person.
- G. Insurance.** The City and County agree to each cover its own risks for liability through either obtaining insurance or by self-insuring itself against any risk. Each shall furnish the other with evidence of such insurance, if any, upon request.

H. Indemnification. Neither party agrees to indemnify or hold harmless the other party. However, to the extent permitted by law, each party agrees to be responsible for its own acts or omissions and any and all claims, liabilities, injuries, suits, and demands and expenses of all kinds which may result from or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by that party, its employees, subcontractors, or representatives, in the performance or omission of any act of responsibility of that party under this ILA. In the event that a claim is made against both parties it is the intent of both parties to cooperate in the defense of said claim. However, either party shall have the right to take any and all actions they believe necessary to protect their interest arising out of the performance or nonperformance of this ILA. This provision shall survive the termination of this ILA. Notwithstanding the above, neither party waives its governmental immunity, or any other immunity granted by law and all parties reserve the same unto themselves.

I. Notices. Notices under this agreement shall be delivered by US Mail, Electronic Deliver, or hand delivery to the contacts for the parties as provided herein:

To the CITY:
City of Durham
Attn: City Manager
101 City Hall Plaza
Durham, NC 27701

To the COUNTY:
County of Durham
Attn: County Manager
200 East Main Street
Durham, NC 27701

With Copy to:
City Attorney's Office
City of Durham
101 City Hall Plaza
Durham, NC 27701

With Copy To:
County Attorney's Office
County of Durham
200 East Main Street
Durham, NC 27701

J. Reporting. To allow the County to satisfy any of its own reporting requirements and to ensure that the County is aware of the outcomes and results stemming from the use of the County's funds, the City agrees to provide quarterly updates to the County regarding the utilization of the funds provided and program outcomes achieved, using any templates or standards provided by the County.

K. Attachments. The following attachments are incorporated by reference. If there is a conflict between the attachment(s) and this agreement, the terms of this agreement shall govern.

- a. Attachment 1: American Rescue Plan Act (ARPA)/Coronavirus State and Local Fiscal Recovery Fund (CSLRF) Subaward Agreement

L. Severability. In the event any term or provision of this Agreement shall be adjudged to be partially or completely invalid or unenforceable, then such term or provision shall be severed from this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Parties have approved this Agreement and have caused it

to be signed by the County Manager by approval of the Board of County Commissioners and the City Manager by approval of the City Council duly attested, the year and day first written above.

CITY OF DURHAM

BY: Wanda S. Page, City Manager

ATTEST:_____

CLERK

COUNTY OF DURHAM

BY: Dr. Kimberly J. Sowell, County Manager

ATTEST:_____

CLERK

Attachment 1

American Rescue Plan Act (ARPA)/Coronavirus State Local Fiscal Recovery Fund (CSLFRF) Funds Subaward Agreement

THIS AGREEMENT is entered into this ____ day of _____, 2024 by and between the COUNTY of Durham, a political subdivision of the North Carolina (hereafter the "COUNTY"), North Carolina and the City of Durham, a North Carolina Municipal Corporation, (hereafter the "SUBRECIPIENT" or the "CITY"), collectively referred to as the "Parties".

Article I. Overview.

Section 1.1. Parties. The parties to this agreement are COUNTY of Durham, North Carolina, a political subdivision of North Carolina ("COUNTY") and City of Durham, a North Carolina municipal corporation, ("SUBRECIPIENT").

Section 1.2. Definitions. The definitions in 2 CFR 200.1 are hereby incorporated into this Agreement.

Section 1.3. Roles. For the purposes of this Agreement, the COUNTY serves as a pass-through entity.

Section 1.4. Source of Funding. This Agreement is funded by a portion of the \$62,445,275 allocated to the COUNTY by the Coronavirus State Local Fiscal Recovery Fund created under section 603 of the American Rescue Plan Act of 2021 (ARP/CSLFRF).

Section 1.5. Purpose. The purpose of this Agreement is to establish the terms and conditions for a subaward allocated to the SUBRECIPIENT from the COUNTY.

Section 1.6. Disclosures. Federal regulations, specifically 2 CFR 200.332(a)(1), require the COUNTY to provide the SUBRECIPIENT with specific information about this subaward. All required information is listed in Exhibit A (Subaward Data).

Section 1.7. Term. This Agreement shall govern the performance of the parties for the period April 24, 2023 (the "Effective Date") through December 31, 2026 ("Expiration Date"), unless earlier terminated by either party in accordance with the terms of this Agreement ("Agreement Term").

Article II. Scope of Funded Activities.

Section 2.1. Scope of Services. SUBRECIPIENT shall perform all activities described in the scope of activities, attached hereto as Exhibit B (Scope of Work).

Section 2.2. Budget. SUBRECIPIENT shall perform the Scope of Work in accordance with the program budget as approved by the COUNTY and attached hereto as Exhibit C (Approved Budget).

Section 2.3. Prior Approval for Changes. SUBRECIPIENT may not transfer allocated funds among cost categories within a budgeted program account without the prior written approval of the COUNTY; nor shall SUBRECIPIENT make any changes, directly or indirectly, to program design, Scope of Work, or Approved Budget without the prior written approval of COUNTY.

Article III. Compensation.

Section. 3.1. Payment of Funds. COUNTY agrees to pay, SUBRECIPIENT for anticipated costs to be incurred and paid by SUBRECIPIENT in accordance with the Approved Budget and for the performance of the Scope of Work under this Agreement in an amount not to exceed ONE MILLION DOLLARS 00/100 (\$1,000,000) ("Total Agreement Funds").

The amount of Total Agreement Funds, however, is subject to adjustment by the COUNTY if a substantial change is made in the Scope of Work that affects this Agreement or if this Agreement is terminated prior to the expiration of the Agreement. Program funds shall not be expended prior to the Effective Date or following the earlier of the Expiration Date or the last day of the Agreement Term. Costs incurred shall only be as necessary and allowable to carry out the purposes and activities of the Scope of Work and may not exceed the maximum limits set in the Approved Budget. Expenses charged against the Total Agreement Funds shall be incurred in accordance with this Agreement.

Section. 3.2. Funding. The COUNTY will provide SUBRECIPIENT with a onetime payment not to exceed \$1,000,000 for allocation as provided in **Attachment D- Approved Budget**. No additional payments or reimbursement requests shall be made under this agreement. SUBRECIPIENT shall provide complete documentation required to substantiate use of the funds to the COUNTY in a format approved by the COUNTY. Required documentation for such payment is detailed in **Attachment B - Scope of Work** and must be submitted no later than the twentieth (20th) day of the month in any event no later than thirty (30) days from date of contract execution and prior to first expenditure by SUBRECIPIENT in accordance with this agreement. All subsequent expenditures shall be documented as set forth in **Attachment B-Scope of Work** as actual expenditures of SUBRECIPIENT in accordance with this Agreement and in a format as dictated by the COUNTY.

Section. 3.3. COUNTY's Subaward Obligations Contingent on Federal Funding and SUBRECIPIENT Compliance. The payment of funds to SUBRECIPIENT under the terms of this Agreement shall be contingent on the receipt of such funds by COUNTY from the ARP/CSLFRF and shall be subject to SUBRECIPIENT's continued eligibility to receive funds under the applicable provisions of state and federal laws. If the amount of funds that COUNTY receives from the ARP/CSLFRF is reduced, COUNTY may reduce the amount of funds awarded under this Agreement or terminate this Agreement. COUNTY also may deny payment for SUBRECIPIENT's expenditures for Scope of Work where invoices or other reports are not submitted by the deadlines specified in this Agreement or for failure of SUBRECIPIENT to comply with the terms and conditions of this Agreement.

Article IV. Financial Accountability and Grant Administration.

Section. 4.1. Financial Management. SUBRECIPIENT shall maintain a financial management system and financial records related to all transactions with funds received pursuant to this Agreement and with any program income earned as a result of funds received pursuant to this Agreement. SUBRECIPIENT must administer funds received pursuant to this Agreement in accordance with all applicable federal and state requirements, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, as required by the ARP/CSLFRF Assistance Listing (21.027). SUBRECIPIENT shall adopt such additional financial management procedures as may from time-to-time be prescribed by COUNTY if required by applicable federal or state laws or regulations, or guidelines from US Department of Treasury. SUBRECIPIENT shall maintain detailed, itemized documentation and other necessary records of all income received and expenses incurred pursuant to this Agreement.

Section. 4.2. Limitations on Expenditures. COUNTY shall only approve funding SUBRECIPIENT for documented expenditures incurred during the Agreement Term that are: (i) reasonable and necessary to carry out the scope of Scope of Work described in Exhibit B; (ii) documented by contracts or other evidence of liability consistent with the established COUNTY and SUBRECIPIENT procedures; and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement. COUNTY may not reimburse or otherwise compensate SUBRECIPIENT for any expenditures incurred or services provided prior to the Effective Date or following the earlier of the expiration or termination of this Agreement.

Section. 4.3. Indirect Cost Rate. The indirect cost rate, if any, indicated in Exhibit C (Approved Budget) shall apply to this Agreement.

Section. 4.4. Financial and Other Reports. SUBRECIPIENT shall submit to COUNTY such reports and back-up data as may be required by the Federal Government or COUNTY, including such reports which enable COUNTY to submit its own reports to the US Department of Treasury, including quarterly financial reports and performance reports on June 30 (Q1); September 30 (Q2); December 31 (Q3); and March 31 (Q4), and in accordance with the following schedule, which may be amended from time to time:

<u>REPORT</u>	<u>DEADLINE</u>
Quarterly Report Reviews	June 30 (Q1); September 30 (Q2); December 31 (Q3); March 31 (Q4)
Desk Reviews	Annually (or more frequently if requested by either Party)
Onsite Reviews	Upon request of either party
Annual Audit Review	If necessary, upon request

This provision shall survive the expiration or termination of this Agreement with respect to any reports which the SUBRECIPIENT is required to submit to COUNTY following the expiration or termination of this Agreement.

Section. 4.5. Improper Payments. Any item of expenditure by SUBRECIPIENT under the terms of this Agreement which is found by auditors, investigators, and other authorized representatives of the COUNTY, the US Department of Treasury, the NC Department of State Treasurer, or other federal or state instrumentality to be improper, unallowable, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of SUBRECIPIENT, shall become SUBRECIPIENT's liability, and shall be paid solely by SUBRECIPIENT, immediately upon notification of such, from funds other than those provided by COUNTY under this Agreement or any other agreements between COUNTY and SUBRECIPIENT. This provision shall survive the expiration or termination of this Agreement.

Section. 4.6. Audits and Access to Records. SUBRECIPIENT certifies compliance with applicable provisions of 2 CFR 200.501-200.521, and continued compliance with these provisions during the term of this section. If SUBRECIPIENT is not required to have a Single Audit as defined by 200.501, US Department of Treasury requirements, or the Single Audit Act, then SUBRECIPIENT may be required, upon the COUNTY'S request, to have a financial audit performed yearly by an independent Certified Public Accountant. SUBRECIPIENT shall provide notice of the completion of any required audits and will provide access to such audits and other financial information related to the Agreement upon request. SUBRECIPIENT certifies that it will provide COUNTY with notice of any adverse findings which impact this Agreement. This obligation extends for one year beyond the expiration or termination of this Agreement.

Section. 4.7. Closeout. Final payment request(s) under this Agreement must be received by COUNTY no later than thirty (30) days after the earlier of the Expiration Date or the last day of the Agreement Term. COUNTY will not accept a payment request submitted after this date without prior authorization from COUNTY. In consideration of the execution of this Agreement by COUNTY, SUBRECIPIENT agrees that acceptance of final payment from COUNTY will constitute an agreement by SUBRECIPIENT to release and forever discharge COUNTY, its agents, employees, officers, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which SUBRECIPIENT has at the time of acceptance of final payment or may thereafter have, arising out of, in connection with or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement. The SUBRECIPIENT's obligations to COUNTY under this Agreement shall not terminate until all closeout requirements are completed to the satisfaction of COUNTY. Such requirements shall include submitting final reports to COUNTY and providing any closeout-related information requested by COUNTY by the deadlines specified by COUNTY. This provision shall survive the expiration or termination of this Agreement.

Article V. Compliance with Grant Agreement and Applicable Laws.

Section. 5.1. General Compliance. SUBRECIPIENT shall perform all Scope of Work funded by this Agreement in accordance with this Agreement, the award agreement between COUNTY and the US Department of Treasury, and all applicable federal, state, and local requirements, including all applicable statutes, rules, regulations, executive orders, directives, or other requirements. Such requirements may be different from SUBRECIPIENT's current policies and practices. COUNTY may assist SUBRECIPIENT in complying with all applicable requirements. However, SUBRECIPIENT remains responsible for ensuring its compliance with all applicable requirements.

Section. 5.2. Expenditure Authority. This Agreement is subject to the laws, regulations, and guidance documents authorizing and implementing the ARP/CSLFRF grant, including, but not limited to, the following:

Authorizing Statute. Section 603 of the *Social Security Act* (42 U.S.C. 803), as added by section 9901(a) of the *American Rescue Plan Act of 2021* (Pub. L. No. 117-2).

Implementing Regulations. Subpart A of 31 CFR Part 35 (Coronavirus State and Local Fiscal Recovery Funds), as adopted in the *Coronavirus State and Local Fiscal Recovery Funds* interim final rule (86 FR 26786, applicable May 17, 2021, through March 31, 2022) and final rule (87 FR 4338, applicable January 27, 2022, through the end of the ARP/CSLFRF award term), and other subsequent regulations implementing Section 603 of the Social Security Act (42 U.S.C. 803).

Guidance Documents. Applicable guidance documents issued from time-to-time by the US Department of Treasury, including the currently applicable version of the *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*.¹

This Agreement is also subject to all applicable laws of the State of North Carolina.

Section. 5.3. Federal Grant Administration Requirements. SUBRECIPIENT shall comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 CFR Part 200 (UG), as adopted by the Department of Treasury at 2 CFR Part 1000 and as set forth in the [Assistance Listing for ARP/CSLFRF \(21.027\)](#). These requirements dictate how SUBRECIPIENT must administer the subaward and how COUNTY must oversee SUBRECIPIENT.

The applicable UG provisions are as follows:

[Subpart A, Acronyms and Definitions](#)

[Subpart B, General provisions](#)

[Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards](#) (except 2 CFR 200.204, .205, .210, and .213)

[Subpart D, Post Federal; Award Requirements](#) (except 2 CFR 200.305(b)(8) & (9), .308, .309, and .320(c)(4))

[Subpart E, Cost Principles](#)

[Subpart F, Audit Requirements](#)

[2 CFR Part 25](#) (Universal Identifier & System for Award Management)

[2 CFR Part 170](#) (Reporting Subaward and Executive Compensation Information)

[2 CFR Part 180](#) (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement))

SUBRECIPIENT shall document compliance with UG requirements, including adoption and implementation of all required policies and procedures, within thirty (30) days of the execution of this Agreement and during all subsequent reviews during the term of the Agreement. COUNTY may provide sample policies or other assistance to SUBRECIPIENT in meeting these compliance requirements. Regardless of COUNTY's assistance, it is the SUBRECIPIENT's responsibility to properly comply with all UG requirements. Failure to do so may result in termination of the Agreement by COUNTY.

¹ <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

Section. 5.4. Procurement Requirements.

- (a) **Federal.** Consistent with UG compliance requirements, including the standards in 2 CFR 200.318-327 for the acquisition of property, equipment, supplies, or services required under this Agreement, SUBRECIPIENT shall adopt and enact procurement procedures. SUBRECIPIENT's documented procurement procedures must conform to the procurement standards identified in Subpart D of 2 CFR Part 200 (Procurement Standards). Such standards include, but are not limited to, the following:
1. All procurement transactions for property or services shall be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, including 2 CFR 200.320(c)(1)-(3) and (5), which allows for non-competitive procurements only if either (1) the item is below the micro-purchase threshold; (2) the item is only available from a single source; (3) the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or (4) after solicitation of a number of sources, competition is determined inadequate.
 2. SUBRECIPIENT shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
 3. Pursuant to 2 CFR 200.321, SUBRECIPIENT shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
 4. SUBRECIPIENT shall "maintain records sufficient to detail the history of procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price." 2 CFR 200.318(i).
- (b) **Local.** In addition to the requirements described in subsection (a), the SUBRECIPIENT shall comply with the following:
1. **Reporting.** SUBRECIPIENT shall document, in its quarterly report to COUNTY, the status of all contracts executed in connection with this Agreement.
 2. **COUNTY review of solicitations.** Except for micro-purchases made pursuant to 2 CFR 200.320(a)(1) or procurements by small purchase procedures pursuant to 2 CFR 200.320(a)(2), if SUBRECIPIENT proposes to enter into any contract for the performance of any of the Scope of Work under this Agreement, then the SUBRECIPIENT shall forward to COUNTY a copy of any solicitation (whether competitive or non-competitive) at least fifteen (15) days prior to the publication or communication of the solicitation. COUNTY will review the solicitation and provide comments, if any, to SUBRECIPIENT within three (3) business days. Failure to respond within three (3) business days does not constitute approval by the COUNTY. Consistent with 2 CFR 200.324, COUNTY will review the solicitation for compliance with applicable procurement standards. COUNTY's review and comments shall not constitute a binding approval of the solicitation. Regardless of COUNTY's review, SUBRECIPIENT remains bound by all applicable laws, regulations, and Agreement terms. If during its review COUNTY identifies any deficiencies, then COUNTY will communicate those deficiencies to SUBRECIPIENT as quickly as possible within the three (3) business day window outlined above.
 3. **COUNTY review of contracts.** Except for micro-purchases pursuant to 2 CFR 200.320(a), if SUBRECIPIENT proposes to enter into any contracts for the performance of any of the Scope of Work under this Agreement, then SUBRECIPIENT shall forward to COUNTY a copy of the written contract prior to contract execution. COUNTY shall review the unexecuted contract for compliance with applicable requirements and provide comments, if any, to SUBRECIPIENT within three (3) business days. Failure to respond within three (3) business days does not constitute approval by the COUNTY. Consistent with 2 CFR. 200.324, COUNTY will review the unexecuted contract for compliance with the procurement standards outlined in 2 CFR §§200.318 through 200.327 as well as Appendix II to 2 CFR Part 200. COUNTY's review and comments shall not constitute an approval of the contract. Regardless of COUNTY's review, SUBRECIPIENT remains bound by all applicable laws, regulations, and Agreement terms. If during its review COUNTY identifies any deficiencies, then COUNTY will communicate those deficiencies to SUBRECIPIENT as soon as possible within the three (3) business day window outlined above. SUBRECIPIENT must correct the noted deficiencies before executing the contract.

- (c) **Conflicts of Interest.** In addition to the requirements described in subsections (a) and (b), SUBRECIPIENT shall comply with the following provisions related to conflicts of interest:
- (1) **Conflict of Interest Policies.** For any procurements conducted with grant funds under this agreement, SUBRECIPIENT shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts in conformance with 2 CFR 200.318(e). No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real OR apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the SUBRECIPIENT. SUBRECIPIENT shall immediately disclose in writing to COUNTY any potential conflict of interest affecting the awarded funds in accordance with 2 CFR 200.112.
 - (2) **Organizational Conflicts of Interest.** If SUBRECIPIENT has a parent, affiliate, or subsidiary organization, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, SUBRECIPIENT would be unable or appear to be unable to be impartial in conducting a procurement action involving a related organization. SUBRECIPIENT must ensure that no transactions are conducted using funds under this agreement where there is an organizational conflict of interest.
 - (3) **Termination of Agreement.** If SUBRECIPIENT enters into a contract where there was a conflict of interest or organizational conflict of interest, it will be grounds for the COUNTY to terminate this grant agreement in accordance with the provisions of Article VII. Default and Termination.
- (d) **Mandatory Contract Provisions.** SUBRECIPIENT must include contract provisions required by UG and other state and federal laws and regulations, and as otherwise dictated by COUNTY.

Section 5.5. Subawards. In executing this Agreement, SUBRECIPIENT may enter a subaward without prior written approval from COUNTY. SUBRECIPIENT must provide notice to the COUNTY of any subawards issued using the provided funding within fifteen (15) days of issuance of the subaward.

Section 5.6. Property Management. All real property acquired or improved, and equipment or supplies purchased in whole or in part with ARP/CSLFRF funds, must be used, insured, managed, and disposed of in accordance with 2 CFR 200.311 through 2 CFR 200.316.

Section 5.7 Program Income. If SUBRECIPIENT earns program income, as defined in 2 CFR 200.1 during the term of the subaward, it must segregate the gross proceeds of the program income and follow the provisions in 2 CFR 200.307. Any anticipated program income shall be budgeted in Exhibit C and reported to the COUNTY. Any unanticipated Program Income shall be managed in accordance with COUNTY policy.

Section. 5.8. Federal Restrictions on Lobbying. SUBRECIPIENT shall comply with the restrictions on lobbying in 31 CFR Part 21. Pursuant to this regulation, SUBRECIPIENT may not use any federal funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: 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. SUBRECIPIENT shall certify in writing that SUBRECIPIENT has not made, and will not make, any payment prohibited by these requirements using the form provided in Exhibit D (Lobbying Certifications).

Section. 5.9. Universal Identifier and System for Award Management (SAM). SUBRECIPIENT shall obtain, and provide to the COUNTY, a unique entity identifier assigned by the System for Award Management (SAM), which is accessible at www.sam.gov.

Section. 5.10. Equal Opportunity & Other Requirements. SUBRECIPIENT shall adopt and enact a nondiscrimination policy consistent with the requirements in this section.

Civil Rights Laws. SUBRECIPIENT shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

Fair Housing Laws. SUBRECIPIENT shall comply with the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

Disability Protections. SUBRECIPIENT shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

Age Discrimination. SUBRECIPIENT shall comply with the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 CFR Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.

Americans with Disabilities Act. SUBRECIPIENT shall comply with Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

Section. 5.11. Suspension and Debarment. SUBRECIPIENT shall comply with the Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR Part 180, as adopted by the U.S. Department of Treasury at 31 CFR Part 19. SUBRECIPIENT represents that neither it, nor any of its principals has been debarred, suspended, or otherwise determined ineligible to participate in federal assistance awards or contracts. SUBRECIPIENT further agrees that it will notify COUNTY immediately if it or any of its principals is placed on the list of parties excluded from federal procurement or nonprocurement programs available at www.sam.gov.

Section. 5.12. Federal Funding Accountability and Transparency Act of 2006. SUBRECIPIENT shall provide COUNTY with all information requested by COUNTY to enable COUNTY to comply with the reporting requirements of the *Federal Funding Accountability and Transparency Act of 2006* (31 USC 6101 note).

Section. 5.13. Licenses, Certifications, Permits, Accreditation. SUBRECIPIENT shall obtain and keep current any license, certification, permit, or accreditation required by federal, state, or local law and shall submit to COUNTY proof of any licensure, certification, permit or accreditation upon request.

Section. 5.14. Publications. Any publications produced with funds from this Agreement shall be approved by the County (Manager's Office or Public Information Office) prior to publication. Notice of the proposed publication shall be submitted at least 15 days prior to publication. If there is no response to the proposed publication within 15 days of submission it shall be considered approved. Proposed publications shall be sent to all of the following:

Dawn Dudley: ddudley@dconc.gov

Claudia Hager: chager@dconc.gov

Section 5.15. Program for Enhancement of Contractor Employee Protections. SUBRECIPIENT is hereby notified that they are required to: inform its employees working on any federal award that they are subject to the whistleblower rights and remedies of the program; inform its employees in writing of employee whistleblower protections under 41 U.S.C §4712 in the predominant native language of the workforce; and include such requirements in any agreement made with a subcontractor or subgrantee.

Section 5.16. Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment. Pursuant to 2 CFR 200.216, SUBRECIPIENT shall not obligate or expend funds received under this Subaward to: (1) procure or

obtain; (2) extend or renew a contract to procure or obtain; or (3) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services (as described in Public Law 115-232, section 889) as a substantial or essential component of any system, or as a critical technology as part of any system.

Section 5.17. Use of Name. Neither party to this Agreement shall use the other party's name, trademarks, or other logos in any publicity, advertising, or news release without the prior written approval of an authorized representative of that party. The parties agree that each party may use factual information regarding the existence and purpose of the relationship that is the subject of this Agreement for legitimate business purposes, to satisfy any reporting and funding obligations, or as required by applicable law or regulation without written permission from the other party. In any such statement, the relationship of the parties shall be accurately and appropriately described.

Section 5.18. Highest Compensated Officers. The names and total compensation of the five most highly compensated officers of SUBRECIPIENT shall be listed if the SUBRECIPIENT in the preceding fiscal year received 80 percent or more of its annual gross revenues in Federal awards; and \$25,000,000 or more in annual gross revenues from Federal awards; and the public does not have access to this information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. See FFATA § 2(b)(1) Code of 1986. If this requirement applies to SUBRECIPIENT, SUBRECIPIENT will submit the list of its five most highly compensated officers to COUNTY within thirty (30) days of the execution of this Agreement and yearly thereafter during the Agreement term.

Section 5.19. Statement of Assurances. SUBRECIPIENT certifies compliance with SF 424B (Statement of Assurances – Non-Construction) and SF424D (Statement of Assurances – Construction).

Section 5.20. RESERVED.

Section 5.21. Stevens Amendments Requirements. SUBRECIPIENT shall identify that federal assistance funds were used to fund Scope of Work under this Agreement in any publicity and /or signage relating to the funded project or program.

Article VI. Cooperation in Monitoring and Evaluation.

Section. 6.1. COUNTY Responsibilities. COUNTY shall monitor, evaluate, and provide guidance and direction to SUBRECIPIENT in the conduct of Scope of Work performed under this Agreement. COUNTY must determine whether SUBRECIPIENT has spent funds in accordance with applicable laws, regulations, including the federal audit requirements and agreements and shall monitor the activities of SUBRECIPIENT to ensure that SUBRECIPIENT has met such requirements. COUNTY may require SUBRECIPIENT to take corrective action if deficiencies are found.

The type and degree of monitoring activities depends on the results of the SUBRECIPIENT Risk Assessment, as detailed in COUNTY's Subaward and Monitoring Policy for the expenditure of ARP/CSLFRF funds (see policy at [American Rescue Plan Act \(ARPA\) Funds | Durham County \(dconc.gov\)](#)).

The following specific monitoring activities apply to this Agreement:

- (a) Quarterly Report Reviews
- (b) Annual Desk Reviews (or more frequently if requested by either Party)
- (c) Onsite Reviews (upon request of either Party), and
- (d) Annual Audit Review, if necessary, upon request.

Section. 6.2. SUBRECIPIENT Responsibilities.

- (a) **Cooperation with COUNTY Oversight.** SUBRECIPIENT shall permit COUNTY to carry out monitoring and evaluation activities, including any performance measurement system required by applicable law, regulation, funding sources guidelines or by the terms and conditions of the applicable grant award, and SUBRECIPIENT agrees to ensure, to the greatest extent possible, the cooperation of its agents, employees and board members

in such monitoring and evaluation efforts. This provision shall survive the expiration or termination of this Agreement.

- (b) **Cooperation with Audits.** SUBRECIPIENT shall cooperate fully with any reviews or audits of the activities under this Agreement by authorized representatives of COUNTY, the North Carolina State Auditor, the US Department of Treasury, and the US Government Accountability Office. SUBRECIPIENT agrees to ensure to the extent possible the cooperation of its agents, employees, and board members in any such reviews and audits. This provision shall survive the expiration or termination of this Agreement.
- (c) **Updates to Durham County Board of County Commissioners.** SUBRECIPIENT shall provide presentations consisting of updates and accountability for all funded projects at a regularly-scheduled meeting of the Board of County Commissioners upon request by the County, at least once per fiscal year but no more than three times annually. County shall provide at least thirty (30) days advance notice of the meeting.

Section 6.3. Interventions. If COUNTY determines that SUBRECIPIENT is not in compliance with this Agreement, COUNTY may initiate an intervention, in accordance with 2 CFR 200.208 and 2 CFR 200.339. The degree of SUBRECIPIENT's performance or compliance deficiency will determine the degree of intervention. All possible interventions are listed below and will depend on the degree of deficiency in SUBRECIPIENT's performance or compliance deficiency.

If COUNTY determines that an intervention is warranted, it shall provide written notice to SUBRECIPIENT of the intervention within thirty (30) days of the completion of a report review, desk review, onsite review, audit review, or procedures engagement review or as soon as possible after the COUNTY otherwise learns of a compliance or performance deficiency related to the execution of this Agreement. The written notice shall notify SUBRECIPIENT of the following related to the intervention:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

COUNTY may impose the following interventions on SUBRECIPIENT, based on the level of the compliance or performance deficiency that COUNTY determines:

Level 1 Interventions. These interventions may be required for minor compliance or performance issues.

- (1) SUBRECIPIENT addresses specific internal control, documentation, financial management, compliance, or performance issues within a specified time period
- (2) More frequent or more thorough reporting by the SUBRECIPIENT
- (3) More frequent monitoring by the COUNTY
- (4) Required SUBRECIPIENT technical assistance or training
- (5) Required impact visits to determine actions that may be needed
- (6) Regular Office Hours calls (based on needs)

Level 2 Interventions. These interventions may be required for more serious compliance or performance issues.

- (1) Restrictions on funding payment requests by SUBRECIPIENT
- (2) Disallowing payments to SUBRECIPIENT
- (3) Requiring repayment for disallowed cost items
- (4) Imposing probationary status on SUBRECIPIENT

Level 3 Interventions. These interventions may be required for significant and/or persistent compliance or performance issues.

- (1) Temporary or indefinite funding suspension to SUBRECIPIENT
- (2) Nonrenewal of funding to SUBRECIPIENT in subsequent year
- (3) Terminate funding to SUBRECIPIENT in the current year
- (4) Initiate legal action against SUBRECIPIENT
- (5) Interviews with Staff of SUBRECIPIENT
- (6) Audit assistance

Interventions will remain in place until the underlying performance or compliance deficiency is addressed to the sole satisfaction of COUNTY.

Section 6.4. Records Retention and Access. SUBRECIPIENT shall maintain all records, books, papers, and other documents related to its performance of Scope of Work under this Agreement (including without limitation personnel, property, financial and medical records) through at least December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving this Agreement. SUBRECIPIENT shall make all records, books, papers, and other documents that relate to this Agreement available at all reasonable times for inspection, review, and audit by the authorized representatives of COUNTY, the North Carolina State Auditor, the US Department of Treasury, the US Government Accountability Office, and any other authorized state or federal oversight office.

Section 6.5. Key Personnel. SUBRECIPIENT shall identify all personnel who will be involved in performing Scope of Work and otherwise administering the Agreement, including at least one project manager and one fiscal officer (Key Personnel). SUBRECIPIENT shall notify COUNTY of any changes to these personnel within thirty (30) days of the change. Key personnel names, titles, and contact information are listed in Exhibit E (Key Personnel).

Article VII. Default and Termination.

Section. 7.1. Termination for Cause. COUNTY may terminate this Agreement for cause after three days written notice. Cause may include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, or failure to comply with any of the requirements of this Agreement.

Sec. 7.2. Termination for Convenience ("TFC").

(a) Procedure. Without limiting any party's right to terminate for breach, the parties agree that either party may, without cause, and in its discretion, terminate this contract for convenience by giving the other party written notice that refers to this section. TFC shall be effective 120 days after the time indicated in the notice.

(b) Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions shall remain in force. At the time of TFC or as soon afterwards as is practical, the SUBRECIPIENT shall give the COUNTY all Work, including partly completed Work. In case of TFC, the SUBRECIPIENT shall follow the COUNTY's instructions as to which subcontracts to terminate.

(c) Payment. Within 20 days after TFC, the party electing to terminate under this Section shall pay the other party one hundred dollars as a TFC fee. Upon TFC either party electing to terminate under this Section, the County shall pay the SUBRECIPIENT for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, or if Work was to be paid for on a lump-sum basis, the COUNTY shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. Neither party shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 7.3. Termination by Mutual Agreement. COUNTY and SUBRECIPIENT may agree to terminate this Agreement for their mutual convenience through a written amendment to this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.

Sec. 7.4. Termination Procedures. If this Agreement is terminated, SUBRECIPIENT may not incur new obligations for the terminated portion of the Agreement after SUBRECIPIENT has received the notification of termination. SUBRECIPIENT must cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. SUBRECIPIENT shall not be relieved of liability to COUNTY because of any breach of Agreement by SUBRECIPIENT. COUNTY may, to the extent authorized by law, withhold payments to SUBRECIPIENT for the purpose of set-off until the exact amount of damages due COUNTY from SUBRECIPIENT is determined. The COUNTY Manager or its designee shall have the authority to terminate this agreement under Article

VII. As of the effective date of TFC, SUBRECIPIENT shall reimburse COUNTY any and all funds not yet utilized, Said reimbursement shall be made within 60 days of the termination effective date.

Article VIII. General Conditions.

Section. 8.1. E-Verify Requirements. (a) If this Agreement is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the SUBRECIPIENT represents and covenants that the SUBRECIPIENT and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "SUBRECIPIENT," "SUBRECIPIENT's subcontractors," and "comply" as used in this subsection (a) shall have the meanings of "Contractor," "Contractor's subcontractors," and "comply" respectively as intended by NCGS 143-129(j); and (iii) the COUNTY is relying on this subsection (a) in entering into this Agreement. (b) If this Agreement is subject to NCGS 143-133.3, the SUBRECIPIENT and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

Section. 8.2. Intentionally Omitted.

Section. 8.3. Insurance.

The CITY and COUNTY agree to each cover its own risks for liability through either obtaining insurance or by self-insuring itself against any risk. Each shall furnish the other with evidence of such insurance, if any, upon request.

Section. 8.4. Choice of Law and Forum; Service of Process. (i) This Contract shall be deemed made in Durham County, North Carolina, and shall be governed by and construed in accordance with the law of North Carolina, with the exclusive forum and venue for all actions arising out of this Contract being the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the SUBRECIPIENT is not a natural person (for instance, the SUBRECIPIENT is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the SUBRECIPIENT to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the SUBRECIPIENT agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint.

Section. 8.5. Notice.

(a) In General. This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term.

(b) Means of Delivery of Notice. (i) Common Carrier. All such notices shall be in writing and sent by common carrier or personal delivery. Those sent by common carrier shall include instructions to obtain the recipient's signature and/or a signature at the recipient's address. Common carrier means UPS, FedEx, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or United States Postal Service (USPS). (ii) Notice given by Personal Delivery. If the sender causes the notice to be hand delivered to a natural person 18 years or older at the address of the SUBRECIPIENT indicated under subsection (f) below, notice is deemed given. (iii) Common Carrier Leaves Notice. If the sender obtains a signature through a common carrier pursuant to subsection (i), notice is deemed given. If, however, the common carrier does not obtain such a signature between 8:30 AM – 4:30 PM Monday-Friday on a day that is not a Holiday but leaves the notice in a place that it deems safe without obtaining a signature, this process constitutes delivery of the notice provided that the sender also sends the notice by email or fax. Notice is deemed given on the later of (x) the leaving of the notice by the common carrier and (y) the email or fax. A notice is deemed emailed on the date that the sender attempts to send it. A notice is deemed faxed at the earlier of when successfully received or when faxing is unsuccessfully attempted three times at least ten minutes apart. (iv) Requested Additional Method. Regardless of the method of giving notice, the sender is requested but not required to also send it by fax or email.

(c) When Notice Period Is Less than 9 Days. If a required notice period is less than 9 days, the sender is requested to make reasonable attempts, before or promptly after giving notice under subsection (b), also to orally communicate the substance of the contents of the written notice, in person or by telephone. Failure to satisfy this subsection shall not render the written notice invalid.

(d) When Undeliverable Notice Is Deemed Sent by Common Carrier. If a notice sent by common carrier is undeliverable because the address or other information provided to the sender by the other party (the intended recipient) is incorrect, incomplete, or out of date, or for any other reason; and the sender also sends the notice by

fax or email, notice is deemed given on the later of (x) the sender's placing the notice in the custody of the common carrier and (y) the fax or email. A notice is deemed emailed on the date that the sender attempts to send it. A notice is deemed faxed at the earlier of when successfully received or when faxing is unsuccessfully attempted three times at least ten minutes apart.

(e) Change of Address. A change of address, fax number, email address, telephone number, or person to receive notice shall be made by notice given to the other party.

(f) Addresses. Subject to change pursuant to subsection (e), the addresses for these notices are:

To the COUNTY:

COUNTY of Durham
Attn: Deputy Finance Director
7th Floor, 201 East Main Street
Durham, NC 27701

To the SUBRECIPIENT:

City of Durham
Attn: Director of Community Development
101 City Hall Plaza
Durham, NC 27701

With Copy to:

City of Durham
Attn: City Attorney's Office
101 City Hall Plaza
Durham, NC 27701

Section. 8.6. Nonwaiver. No action or failure to act by the COUNTY shall constitute a waiver of any of its rights or remedies that arise out of this Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

Section. 8.7. Performance of Government Functions. Nothing contained in this Contract shall be deemed or construed so as to in any way estop, limit, or impair the COUNTY or CITY from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

Section. 8.8. Severability. If any provision of this Contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

Section. 8.9. Assignment. Successors and Assigns. Without the COUNTY's written consent, the SUBRECIPIENT shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Contract. The COUNTY Manager may consent to an assignment without action by the Durham County Board of Commissioners. Unless the COUNTY otherwise agrees in writing, the SUBRECIPIENT and all assignees shall be subject to all of the COUNTY's defenses and shall be liable for all of the SUBRECIPIENT's duties that arise out of this Contract and all of the COUNTY's claims that arise out of this Contract. Without granting the SUBRECIPIENT the right to assign, it is agreed that the duties of the SUBRECIPIENT that arise out of this Contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

Section. 8.10. Compliance with Law. In performing all of the Project, the SUBRECIPIENT shall comply with all applicable law.

Section. 8.11. Compliance with Non-Discrimination Law and Policy. SUBRECIPIENT shall not discriminate against any contractor, employee, or applicant for employment because of age, race, sex, sexual orientation, gender identity or expression, creed, national origin or ancestry, marital or familial status, pregnancy, military status, religious belief or non-belief, or disability. SUBRECIPIENT shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, race sex, sexual orientation, gender identity or expression, creed, national origin or ancestry, marital or familial status,

pregnancy, military status, religious belief or non-belief, or disability. In the event SUBRECIPIENT is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be canceled, terminated or suspended in whole or in part by COUNTY. **SUBRECIPIENT certifies that SUBRECIPIENT shall abide by Durham County Ordinance Article I, Sections 15-1 through 15-85. Failure to abide by said Ordinance is a breach of this Agreement and grounds for terminating the Agreement for cause and without fault or liability to COUNTY. SUBRECIPIENT must also acknowledge and agree to the Nondiscrimination Addendum, attached hereto as Exhibit F.**

Section. 8.13. No Third-Party Rights Created. This Contract is intended for the benefit of the COUNTY and the SUBRECIPIENT and not any other person.

Section. 8.14. Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) A definition in this Contract will not apply to the extent the context requires otherwise.

Section. 8.15. Modifications. Entire Agreement. A modification of this Contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the COUNTY unless it is signed by the COUNTY Manager, a deputy or assistant COUNTY Manager, or, in limited circumstances, a COUNTY department director. This Contract contains the entire agreement between the parties pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed, or implied, between the parties, other than as set forth or referenced in this Contract.

Section. 8.16. COUNTY's Manager's Authority. To the extent, if any, the COUNTY has the power to suspend or terminate this contract or the SUBRECIPIENT's services under this Contract, that power may be exercised by COUNTY Manager or a deputy or assistant COUNTY Manager without action by the Durham County Board of Commissioners.

IN WITNESS WHEREOF, the COUNTY and the SUBRECIPIENT have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

COUNTY OF DURHAM

County Clerk

By: _____
Kimberly J. Sowell, County Manager

preaudit certificate, if applicable _____

ACKNOWLEDGEMENT OF THE COUNTY OF DURHAM

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, _____, a notary public, certify Kimberly J. Sowell personally appeared before me in Durham County, N. C. on this day; I have personal knowledge of her identity; and she acknowledged that by authority duly given and as the act of the County of Durham, the foregoing document was signed in its corporate name by its County Manager, sealed with its corporate seal, and attested by its said County Clerk or Deputy County Clerk.

This the _____ day of _____, 20_____.

My commission expires: _____

Notary Public

[signatures continued on next page]

ATTEST:

CITY OF DURHAM

City Clerk

By: _____
Wanda Page, City Manager

Preaudit certificate, if applicable _____

ACKNOWLEDGEMENT OF THE CITY OF DURHAM

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, _____, a notary public, certify Wanda Page personally appeared before me in Durham County, N. C. on this day; I have personal knowledge of her identity; and she acknowledged that by authority duly given and as the act of the City of Durham, the foregoing document was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.

This the _____ day of _____, 20_____.

My commission expires: _____

Notary Public

Exhibit A: Subaward Data

SUBRECIPIENT Name	City of Durham
SUBRECIPIENT Unique Entity Identifier:	007301256
Federal Award Identification Number (FAIN):	35-333003
Federal Award Date of Award to the Recipient by the Federal Agency:	March 3, 2021
Subaward Period of Performance Start Date:	April 08, 2024
Subaward Period of Performance End Date:	December 31, 2026
Amount of Federal Funds Obligated by this Action by the Pass-Through Entity to the SUBRECIPIENT:	\$1,000,000
Total Amount of Federal Funds Obligated to the SUBRECIPIENT by the Pass-Through Entity Including the Current Obligation:	\$14,500,000
Total Amount of the Federal Award Committed to the SUBRECIPIENT by the Pass-Through Entity:	\$14,500,000
Federal Award Project Description:	Provide grants and other support to bolster the recovery of the Culture and Arts sector in the Durham community.
Name of Pass-Through Entity:	COUNTY of Durham, North Carolina
Contact Information for COUNTY of Durham Authorizing Official:	Dr. Kimberly Sowell 200 East Main Street Durham, NC 27701 919-560-0000
Contact Information for COUNTY Project Manager:	Claudia Hager 200 East Main Street Durham, NC 27701
CFDA Number and Name:	21.027 Coronavirus State and Local Fiscal Recovery Funds
Name of Pass-Through Entity:	COUNTY of Durham, North Carolina
Identification of Whether Subaward is R&D:	No
SUBRECIPIENT Indirect Costs:	N/A

Exhibit B: Scope of Work

The City of Durham and Durham County desire to support the recovery of the Culture and Arts sectors in Durham County from the negative economic impacts of the pandemic. Durham County, by way of this Interlocal Cooperation Agreement, will convey funds from the County's SLFRF grant award not to exceed \$1,000,000 to the City of Durham, which the City of Durham will subsequently utilize to provide grants and other supports to bolster the recovery of the Culture and Arts sector in the Durham community.

Durham County's culture and arts sector is a key economic driver and contributor to making Durham a vibrant, successful community and an attractive environment for investment. Based on data from the Durham Arts Council, Durham's non-profit cultural and arts sector contributes over \$230 million annually to Durham County's economy, supports over 3,000 jobs, and provides more than 2 million cultural and/or arts experiences for citizens and visitors each year. However, this sector was significantly impacted by the COVID-19 pandemic; surveys conducted by the Durham Arts Council showed that, collectively, revenue losses in this sector exceeded more than \$21 million during the height of the pandemic. While recovery has started for the culture and arts sector since 2022, the sector has still not fully regained its pre-pandemic status and capacity, highlighting the need for further investment to help boost recovery from the pandemic's negative economic impacts.

From the \$1,000,000 provided to the City pursuant to this agreement, the City will reserve \$800,000 to be used to partner with the Durham Arts Council and the Hayti Heritage Center/St. Joseph's Historic Foundation to support the development of minority-owned businesses and organizations operating in the culture and arts sector in the Hayti community. The remaining \$200,000 will be used to support recommendations included in the Durham Cultural Arts Plan update, which the City of Durham and Durham County jointly sponsor, including support for small businesses operating in the cultural and arts sector.

The funding provided through this agreement will be utilized to support large and small local arts and cultural nonprofits, businesses, venues, and independent artists through grants, training, planning, and marketing initiatives to help restore jobs, reopen venues, and restart programming. The proposed initiatives will restore and stabilize with special emphasis on ensuring equity across all grant funding categories.

Under Federal laws and regulations, State and local governments are permitted to use SLFRF funds for several categories of expenditures, including for programs that are aimed at responding to and mitigating the negative economic impacts of the COVID-19 pandemic.

Exhibit C: Approved Budget

The final number of projects will be determined after updated cost projections occur. Durham County Government's contribution is up to \$1,000,000. Durham City will provide Durham County with an updated program budget within three (3) months of the enactment of the subaward agreement between the City and the County. The City may elect to modify and/or amend the program budget during the life of the grant agreement , with written approval from the County, provided that the total amount of County funding budgeted and utilized for this subaward does not exceed \$1,000,000.

Exhibit D: Lobbying Certification

The undersigned certifies, to the best of his or her knowledge and belief, that:

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 an 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 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 Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS shall certify and disclose accordingly.

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 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.

Signature of SUBRECIPIENT's Authorized Official

Name and Title of SUBRECIPIENT's Authorized Official

Date

Exhibit E: Key Personnel

COUNTY INFORMATION	
Administrative Address:	COUNTY of Durham, 101 COUNTY Hall Plaza, Durham, NC 27701
Invoice Address:	COUNTY of Durham, 101 COUNTY Hall Plaza, Durham, NC 27701
Project Manager Name:	Claudia Hager
Project Manager Title:	Deputy County Manager
Project Manager Email:	chager@dconc.gov
Project Manager Phone:	919-560-0004
Fiscal Officer Name:	Crystally Wright Covington
Fiscal Officer Title:	Deputy Finance Director
Fiscal Officer Email:	cwright@dconc.gov
Fiscal Officer Telephone:	919-560-0049
SUBRECIPIENT INFORMATION	
Administrative Address:	CITY of Durham, 101 City Hall Plaza, Durham, NC 27701
Invoice Address:	CITY of Durham, 101 City Hall Plaza, Durham, NC 27701
Project Manager Name:	Bertha Johnson
Project Manager Title:	Deputy City Manager
Project Manager Email:	berth.johnson@durhamnc.gov
Project Manager Telephone:	919-560-4222 ext 11234
Fiscal Officer Name:	Tim Flora
Fiscal Officer Title:	Finance Director
Fiscal Officer Email:	Tim.flora@durhamnc.gov
Fiscal Officer Telephone:	919-560-4455 ext 18229

Exhibit F: Nondiscrimination Addendum

American Rescue Plan Act (ARPA)/Coronavirus State Local Fiscal Recovery Fund (CSLFRF) Funds Nondiscrimination Addendum to Subaward Agreement

Between
COUNTY of Durham, North Carolina
and
CITY of Durham, North Carolina

Recitals

WHEREAS, the County of Durham (hereinafter “County”) has received an allocation of funds from the “Coronavirus State Fiscal Recovery Fund” or “Coronavirus Local Fiscal Recovery Fund” (together “CSLFRF funds”), established pursuant to Sections 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (the “ARP/CSLFRF award”).

WHEREAS, Subrecipient City of Durham, North Carolina (hereinafter (“Subrecipient”) is a subrecipient of the allocations of funds described above. This funding and its related agreements are referred to herein as the “program.”

WHEREAS, CSLFRF funds are subject to the U.S. Department of Treasury (“Treasury”) regulations, including the Final Rule, the Award Terms and Conditions, and the Title VII implementing regulations at 31 C.F.R. Part 22.

WHEREAS, County has as its standard practice of operations and contracting the implementation and application of its Non-Discrimination Policy, as enumerated below and in Section 8.11 of the Subaward Agreement.

WHEREAS, pursuant to the ARP/CSLFRF Award Terms and Conditions, and as a condition of receiving CSLFRF funds, County agrees to follow all federal statutes and regulations prohibiting discrimination in its administration of CSLFRF under the terms and conditions of the ARP/CSLFRF award, including, without limitation, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin within programs or activities receiving federal financial assistance;
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving Federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

I. Nondiscrimination Policy Statement

County opposes discrimination on the basis of race, color, religion, national origin, sex, disability, familial status, military status, sexual orientation, gender identity, and protected hairstyle and urges all of its subrecipients to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under county contracts. Furthermore, Subrecipient understands and agrees that no person shall, on the ground of race, color, national origin (including limited English Proficiency), familial status, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any

program or activity administered by County, including programs or activities that are funded in whole or part, with Coronavirus State and Local Fiscal Recovery Funds ("CSLFRF"), which County received from the U.S. Department of Treasury ("Treasury") pursuant to Sections 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (herein the "ARP/CSLFRF award").

II. Governing Statutory & Regulatory Authorities

As required by the CSLFRF Award Terms and Conditions, Subrecipient agrees to and understands that County shall ensure that each "activity," "facility," or "program"² that is funded in whole, or in part, with CSLFRF and administered under the ARP/CSLFRF award, will be facilitated, operated, or conducted in compliance with the following federal statutes and federal regulations prohibiting discrimination. These include, but are not limited to, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age within programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

III. Discriminatory Practices Prohibited in the Administration of the ARP/CSLFRF Award

Subrecipient understands and agrees that:

1. The Subaward Agreement between County and Subrecipient is made pursuant to federal law and policy regarding relief funds such as and including "Coronavirus State Fiscal Recovery Fund" or "Coronavirus Local Fiscal Recovery Fund" (together "CSLFRF funds"), established pursuant to Sections 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (the "ARP/CSLFRF award"). This funding and its related agreements are referred to herein as the "program."

² 22 C.F.R. § 22.3 defines "program" and "activity" as all operations of an entity, including local governments, that receive Federal financial assistance, and the departments, agencies, or special purpose districts of the local governments to which Federal financial assistance is distributed. "Federal financial assistance" includes, among other things, grants and loans of federal funds. "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

To ensure compliance with Title VII of the Civil Rights Act of 1964, and Title 31 Code of Federal Regulations, Part 22, the Civil Rights Restoration Act of 1987, other pertinent nondiscrimination authorities, and Sections 5.10 and 8.11 of the Subaward Agreement between County and Subrecipient, the following is strictly prohibited:

- A. Denying to a person any service, financial aid, or other program benefit without good cause;
 - B. Providing to a person any service, financial aid, or another benefit which is different in quantity or quality, or is provided in a different manner, from that provided to others under the program.
 - C. Subjecting a person to segregation or separate treatment in any matter related to the receipt of any service, financial aid, or other benefit under the program;
 - D. Restricting a person in the enjoyment of any advantages, privileges, or other benefits enjoyed by others receiving any service, financial aid, or other benefit under the program;
 - E. Treating a person differently from others in determining whether that person satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet to be provided any service, financial aid, or other benefit provided under the program;
 - F. Implementing different standards, criteria, or other requirements for admission, enrollment, or participation in planning, advisory, contractual, or other integral activities to the program;
 - G. Adopting methods of administration which, directly or through contractual relationships, would defeat or substantially impair the accomplishment of effective nondiscrimination;
 - H. Selecting a site or location of facilities with the purpose or effect of excluding persons from, denying them the benefits of, subjecting them to discrimination, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI or related acts and regulations;
 - I. Discriminating against any person, either directly or through a contractual agreement, in any employment resulting from the program, a primary objective of which is to provide employment;
 - J. Committing acts of intimidation or retaliation, including threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by any pertinent nondiscrimination law, or because an individual made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing.
2. Any person who believes that because of that person's race, color, national origin, limited English proficiency, familial status, sex, age, religion, or disability that he/she/they have been discriminated against or unfairly treated by the subrecipient in violation of this policy should contact the following County office within 180 days from the date of the alleged discriminatory occurrence:

Durham County Internal Audit Department
200 East Main Street, 4th Floor
Durham, NC 27701
(919) 560-0042

3. The subrecipient shall cooperate with any enforcement or compliance review activities by the County. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The subrecipient shall comply with information requests, on-site compliance reviews, and reporting requirements. Failure to comply could result in repayment of funds or termination of the subrecipient agreement.

Subrecipient further understands and agrees that:

County participates with all applicable federal, state, and local agencies in order to fully comply with Reporting and Enforcement efforts regarding the program, including but not limited to the following:

1. County shall cooperate in any enforcement or compliance review activities by the Department of the Treasury. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. County shall comply with information requests, on-site compliance reviews, and reporting requirements.
2. County shall maintain a complaint log and inform the Treasury of any complaints of discrimination on the grounds of race, color, or national origin (including limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, whether pending or completed, including the outcome. County shall inform the Treasury if it has received no complaints under Title VI.
3. Any person who believes they have been aggrieved by a discriminatory practice under Title VI has a right to file a formal complaint with the Treasury. Any such complaint must be in writing and filed with the Treasury's Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence.
4. Any person who believes that because of that person's race, color, national origin, limited English proficiency, familial status, sex, age, religion, or disability that he/she/they have been discriminated against or unfairly treated by County in violation of this policy should contact the following office within 180 days from the date of the alleged discriminatory occurrence:

Durham County Internal Audit Department

200 East Main Street, 4th Floor

Durham, NC 27701

(919) 560-0042

IV. Conflicts and Interpretation

To the extent that any portion of this Addendum conflicts with any term or condition of this Contract expressed outside of this Addendum, the terms of this Addendum shall govern.

The undersigned hereby affirms that s/he/they/other have contractual and binding authority to execute this Addendum thereby binding Subrecipient to all Terms and Conditions contained herein.

Signature of Subrecipient

Date

Printed Name and Title/Position