

ORANGE COUNTY BOARD OF COMMISSIONERS

SPECIAL MEETING AGENDA

BOCC Special Meeting
August 1, 2022
Meeting – 6:30 p.m.
Whitted Meeting Facility
300 West Tryon Street
Hillsborough, NC

- | | | |
|---------------|----|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| (6:30 – 6:45) | 1. | Ratification of the County Manager's Approval of ARPA Policies |
| (6:45 – 7:00) | 2. | Ratification of County Manager's Execution of an Insurance Coverage Agreement with Travelers Insurance and Approval of a Letter of Credit Agreement |
| | 3. | Adjourn |

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**ORANGE COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date: August 1, 2022

**Action Agenda
Item No. 1**

SUBJECT: Ratification of the County Manager's Approval of ARPA Policies

DEPARTMENT: County Attorney's Office

ATTACHMENT(S):

Allowable Costs and Principles Policy
Conflict of Interest Policy
Federal Funds and ARPA Policy
Program Income Policy
Property Policy
Record Retention Policy
Subaward Policy

INFORMATION CONTACT:

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PURPOSE: To ratify the County Manager's approval of seven ARPA-related policies.

BACKGROUND: The American Rescue Plan Act of 2021 (ARPA) was signed into law in March 2021. ARPA established the Coronavirus State and Local Fiscal Recovery Fund (CSLFRF), which is a program that provides funding to all states, counties, and municipalities across the country. The County has received its ARPA allocation of \$28.8 million.

The U.S. Department of Treasury Final Rule governs the eligible uses of American Rescue Plan Act (ARPA) funds and includes certain compliance policies (attached).

The BOCC adoption of these policies is consistent with current County practices and ARPA compliance requirements.

FINANCIAL IMPACT: There is no financial impact associated with this item.

SOCIAL JUSTICE IMPACT: There is no Orange County Social Justice Goal impact associated with this item.

ENVIRONMENTAL IMPACT: There is no Orange County Environmental Responsibility Goal impact associated with this item.

RECOMMENDATION(S): The Manager recommends the Board ratify the County Manager's approval of the seven attached ARPA policies.

**ORANGE COUNTY POLICY FOR ALLOWABLE COSTS AND COST
PRINCIPLES FOR EXPENDITURE OF AMERICAN RESCUE PLAN
ACT CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY
FUNDS**

WHEREAS Orange County, has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF); and

WHEREAS the funds may be used for projects within these categories, to the extent authorized by state law.

1. Support COVID-19 public health expenditures by funding COVID-19 mitigation and prevention efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to households, small businesses, non-profits, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet; and

WHEREAS the ARP/CSLFRF funds are subject to the provisions of the federal Uniform Grant Guidance, 2 CFR Sect. 200 (UG), as provided in the [Assistance Listing](#); and

WHEREAS the [Compliance and Reporting Guidance for the State and Local Fiscal Recovery Funds](#) provides, in relevant part:

Allowable Costs/Cost Principles. As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability.

ARP/CSLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that ARP/CSLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.

Treasury's Final Rule and guidance and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed in accordance with 2 CFR Part 200, Subpart F are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

- a. Administrative costs: Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the ARP/CSLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the ARP/CSLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the ARP/CSLFRF award such as the cost of facilities or administrative functions like a director's office. Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement (NICRA) established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).
- b. Salaries and Expenses: In general, certain employees' wages, salaries, and covered benefits are an eligible use of ARP/CSLFRF award funds; and

WHEREAS Subpart E of the Uniform Guidance dictates allowable costs and cost principles for expenditure of ARP/CSLFRF funds; and

WHEREAS Subpart E of the Uniform Guidance (specifically, 200.400) states that:

The application of these cost principles is based on the fundamental premises that:

- (a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.
- (b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.
- (c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.
- (d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.
- (e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered.
- (f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.
- (g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award;

BE IT RESOLVED that the governing board of Orange County hereby adopts and enacts the following UG Allowable Costs and Cost Principles Policy for the expenditure of ARP/CSLFRF funds.

Orange County Allowable Costs and Costs Principles Policy

I. ALLOWABLE COSTS AND COSTS PRINCIPLES POLICY OVERVIEW

[Title 2 U.S. Code of Federal Regulations Part 200](#), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance (UG), specifically Subpart E, defines those items of cost that are allowable, and which are unallowable. The tests of allowability under these principles are: (a) the costs must be reasonable; (b) they must be allocable to eligible projects under the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF); (c) they must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the ARP/CSLFRF grant award as to types or amounts of cost items. Unallowable items fall into two categories: expenses which are by their nature unallowable (e.g., alcohol), and unallowable activities (e.g., fund raising).

Orange County shall adhere to all applicable cost principles governing the use of federal grants. This policy addresses the proper classification of both direct and indirect charges to ARP/CSLFRF funded projects and enacts procedures to ensure that proposed and actual expenditures are consistent with the ARP/CSLFRF grant award terms and all applicable federal regulations in the UG.

Responsibility for following these guidelines lies with Orange County's Department of Finance and Administrative Services (Finance), which is charged with the administration and financial oversight of the ARP/CSLFRF. Further, all County employees and officials who are involved in obligating, administering, expending, or monitoring ARP/CSLFRF grant funded projects should be well versed with the categories of costs that are generally allowable and unallowable. Questions on the allowability of costs should be directed to Finance's Budgeting Division and/or Orange County's County Attorney's Office (Attorney's Office). As questions on allowability of certain costs may require interpretation and judgment, County personnel are encouraged to ask for assistance in making those determinations.

II. GENERAL COST ALLOWABILITY CRITERIA

All costs expended using ARP/CSLFRF funds must meet the following general criteria:

1. **Be necessary and reasonable for the proper and efficient performance and administration of the grant program.**

A cost must be *necessary* to achieve a project object. When determining whether a cost is necessary, consideration may be given to:

- Whether the cost is needed for the proper and efficient performance of the grant project.
- Whether the cost is identified in the approved project budget or application.
- Whether the cost aligns with identified needs based on results and findings from a needs assessment.

- Whether the cost addresses project goals and objectives and is based on program data.

A cost is *reasonable* if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision to incur the cost was made. For example, reasonable means that sound business practices were followed, and purchases were comparable to market prices. When determining reasonableness of a cost, consideration must be given to:

- Whether the cost is a type generally recognized as ordinary and necessary for the operation of Orange County or the proper and efficient performance of the federal award.
- The restraints or requirements imposed by factors, such as: sound business practices; arm's-length bargaining; federal, state, and other laws and regulations; and terms and conditions of the ARP/CSLFRF award.
- Market prices for comparable goods or services for the geographic area.
- Whether individuals concerned acted with prudence in the circumstances considering their responsibilities to Orange County, its employees, the public at large, and the federal government.
- Whether Orange County significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the ARP/CSLFRF award's cost.

- 2. Be allocable to the ARP/CSLFRF federal award.** A cost is allocable to the ARP/CSLFRF award if the goods or services involved are chargeable or assignable to the ARP/CSLFRF award in accordance with the relative benefit received. This means that the ARP/CSLFRF grant program derived a benefit in proportion to the funds charged to the program. *For example, if 50 percent of a local government program officer's salary is paid with grant funds, then the local government must document that the program officer spent at least 50 percent of his/her time on the grant program.*

If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized by the ARP/CSLFRF, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required.

- 3. Be authorized and not prohibited under state or local laws or regulations.**

4. **Conform to any limitations or exclusions set forth in the principles, federal laws, ARP/CSLFRF award terms, and other governing regulations as to types or amounts of cost items.**
5. **Be consistent with policies, regulations, and procedures that apply uniformly to both the ARP/CSLFRF federal award and other activities of Orange County.**
6. **Be accorded consistent treatment.** A cost MAY NOT be assigned to a federal award as a direct cost and also be charged to a federal award as an indirect cost. And a cost must be treated consistently for both federal award and non-federal award expenditures.
7. **Be determined in accordance with generally accepted accounting principles (GAAP), unless provided otherwise in the UG.**
8. **Be net of all applicable credits.** The term “applicable credits” refers to those receipts or reduction of expenditures that operate to offset or reduce expense items allocable to the federal award. Typical examples of such transactions are purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to and received by the County related to the federal award, they shall be credited to the ARP/CSLFRF award, either as a cost reduction or a cash refund, as appropriate and consistent with the award terms. For additional requirements and information see the Orange County Program Income Policy.
9. **Be adequately documented.**

III. SELECTED ITEMS OF COST

The Uniform Guidance examines the allowability of fifty-five (55) specific cost items (commonly referred to as Selected Items of Cost) at 2 CFR § 200.420-.475.

Finance personnel responsible for determining cost allowability must be familiar with the Selected Items of Cost. Orange County must follow the applicable regulations when charging these specific expenditures to the ARP/CSLFRF grant.

Finance personnel will check costs against the selected items of cost requirements to ensure the cost is allowable and that all process and documentation requirements are followed. In addition, State laws, Orange County regulations, and program-specific rules may deem a cost as unallowable, and Finance personnel must follow those non-federal rules as well.

Exhibit A identifies and summarizes the Selected Items of Cost.

IV. DIRECT AND INDIRECT COSTS

Allowable and allocable costs must be appropriately classified as direct or indirect charges. It is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost.

Direct costs are expenses that are specifically associated with a particular ARP/CSLFRF-eligible project and that can be directly assigned to such activities relatively easily with a high degree of accuracy. Common examples of direct costs include salary and fringe benefits of personnel directly involved in undertaking an eligible project, equipment and supplies for the project, subcontracted service provider, or other materials consumed or expended in the performance of a grant-eligible project.

Indirect costs are (1) costs incurred for a common or joint purpose benefitting more than one ARP/CSLFRF-eligible project, and (2) not readily assignable to the project specifically benefited, without effort disproportionate to the results achieved. They are expenses that benefit more than one project or even more than one federal grant. Common examples of indirect costs include utilities, local telephone charges, shared office supplies, administrative or secretarial salaries.

For indirect costs, Orange County may charge a 10 percent de minimis rate of modified total direct costs (MTDC). According to UGG Section 200.68 MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance the subawards under the award). MTDC EXCLUDES equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.

V. SPECIAL PROVISIONS FOR STATE AND LOCAL GOVERNMENTS

There are some special provisions of the UG that apply only to states, local governments, and Indian Tribes.

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in [§ 200.475](#)). Unallowable costs include:

- (1) Salaries and expenses of the Office of the Governor of a [state](#) or the chief executive of a [local government](#) or the chief executive of an [Indian tribe](#);
- (2) Salaries and other expenses of a [state](#) legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;
- (3) Costs of the judicial branch of a government;
- (4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in [§ 200.435](#)); and
- (5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For [Indian tribes](#) and Councils of Governments (COGs) (see definition for *Local government* in [§ 200.1](#) of this part), up to 50% of salaries and expenses directly attributable to managing and operating [Federal programs](#) by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

§ 200.416 COST ALLOCATION PLANS AND INDIRECT COST PROPOSALS.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

- (1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and
- (2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices V, VI and VII to this part.

§ 200.417 INTERAGENCY SERVICE.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200.

VI. COST ALLOWABILITY REVIEW PROCESS

PREAPPROVAL COST ALLOWABILITY REVIEW

Before an ARP/CSLFRF-funded project is authorized, Finance must review the proposed cost items within an estimated project budget to determine whether they are allowable and allocable and whether cost items will be charged as direct or indirect expenses. This review will occur

concurrently with the review of project eligibility and *before* obligating or expending any ARP/CSLFRF funds.

- Local government personnel must submit proposed ARP/CSLFRF projects to Finance for review. In addition to other required information, all proposed project submissions must delineate estimated costs by cost item. A template ARPA Expenditure Budget Form is located on the Orange County Intranet at:
<https://intranet.orangecountync.gov/finance/budget/arpa.asp>
- Along with a general review of project eligibility and conformance with other governing board management directives, Finance must review estimated costs for specific allowable cost requirements, budget parameters, indirect rates, fringe benefit rates, and those activities/costs that require pre-approval by the US Treasury. In addition to this Allowable Costs Policy, proposed project must conform to the requirements of Orange County's Project Eligibility Policy.
- If a proposed project includes a request for an unallowable cost, Finance will return the proposal to the requesting party for review and, if practicable, resubmission with corrected cost items.
- Once a proposed project budget is pre-approved by Finance, County personnel responsible for implementing the project must conform actual obligations and expenditures to the pre-approved project budget.

POST-EXPENDITURE COST ALLOWABILITY REVIEW

Once an expenditure is incurred related to an eligible project, and an invoice or other demand for payment is submitted to the County, both the Department responsible for the project and Finance must perform a second review to ensure that actual expenditures comprise allowable costs.

- All invoices or other demands for payment must include a breakdown by cost item. The cost items should mirror those presented in the proposed budget for the project. If an invoice or other demand for payment does not include a breakdown by cost item, the Department responsible for the project will return the invoice to the project manager and/or vendor, contractor, or subrecipient for correction.
- The Department responsible for the project must review the individual cost items listed on the invoice or other demand for payment to determine their allowability and allocability.
- If all cost items are deemed allowable and properly allocable by the Department, they shall forward the invoice or demand for payment to Finance. Finance shall perform a secondary review of the individual cost items listed on the invoice or other demand for payment to confirm their allowability and allocability. If Finance confirm all costs items

are allowable and properly allocable, Finance must proceed through the County's normal disbursement process.

- If any cost item is deemed unallowable, the Department responsible for the project will notify the project management and/or vendor, contractor, or subrecipient that a portion of the invoice or other demand for payment will not be paid with ARP/CSLFRF funds. Finance may in their discretion, and consistent with this policy, allow an invoice or other demand for payment to be resubmitted with a revised cost allocation. If the County remains legally obligated by contract or otherwise to pay the disallowed cost item, it must identify other local government funds to cover the disbursement. Orange County's governing board must approve any allocation of other funds for this purpose.
- The Department responsible for the Project must retain appropriate documentation of budgeted cost items per project and actual obligations and expenditures of cost items per project.

VII. COST TRANSFERS

Any costs charged to the ARP/CSLFRF federal award that do not meet the allowable cost criteria must be removed from the award account and charged to an account that does not require adherence to federal UGG or other applicable guidelines.

Failure to adequately follow this policy and related procedures could result in questioned costs, audit findings, potential repayment of disallowed costs and discontinuance of funding.

EXHIBIT A

Selected Items of Cost	Uniform Guidance General Reference	Allowability
Advertising and public relations costs	2 CFR § 200.421	Allowable with restrictions
Advisory councils	2 CFR § 200.422	Allowable with restrictions
Alcoholic beverages	2 CFR § 200.423	Unallowable
Alumni/ae activities	2 CFR § 200.424	Not specifically addressed
Audit services	2 CFR § 200.425	Allowable with restrictions
Bad debts	2 CFR § 200.426	Unallowable
Bonding costs	2 CFR § 200.427	Allowable with restrictions
Collection of improper payments	2 CFR § 200.428	Allowable
Commencement and convocation costs	2 CFR § 200.429	Not specifically addressed
Compensation – personal services	2 CFR § 200.430	Allowable with restrictions; Special conditions apply (e.g., § 200.430(i)(5))
Compensation – fringe benefits	2 CFR § 200.431	Allowable with restrictions
Conferences	2 CFR § 200.432	Allowable with restrictions
Contingency provisions	2 CFR § 200.433	Unallowable with exceptions
Contributions and donations	2 CFR § 200.434	Unallowable (made by non-federal entity); not reimbursable but value may be used as cost

		sharing or matching (made to non-federal entity)
Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements	2 CFR § 200.435	Allowable with restrictions
Depreciation	2 CFR § 200.436	Allowable with qualifications
Employee health and welfare costs	2 CFR § 200.437	Allowable with restrictions
Entertainment costs	2 CFR § 200.438	Unallowable with exceptions
Equipment and other capital expenditures	2 CFR § 200.439	Allowability based on specific requirement
Exchange rates	2 CFR § 200.440	Allowable with restrictions
Fines, penalties, damages and other settlements	2 CFR § 200.441	Unallowable with exceptions
Fund raising and investment management costs	2 CFR § 200.442	Unallowable with exceptions
Gains and losses on disposition of depreciable assets	2 CFR § 200.443	Allowable with restrictions
General costs of government	2 CFR § 200.444	Unallowable with exceptions
Goods and services for personal use	2 CFR § 200.445	Unallowable (goods/services); allowable (housing) with restrictions
Idle facilities and idle capacity	2 CFR § 200.446	Idle facilities - unallowable with exceptions; Idle capacity - allowable with restrictions
Insurance and indemnification	2 CFR § 200.447	Allowable with restrictions
Intellectual property	2 CFR § 200.448	Allowable with restrictions
Interest	2 CFR § 200.449	Allowable with restrictions

Lobbying	2 CFR § 200.450	Unallowable
Losses on other awards or contracts	2 CFR § 200.451	Unallowable (however, they are required to be included in the indirect cost rate base for allocation of indirect costs)
Maintenance and repair costs	2 CFR § 200.452	Allowable with restrictions
Materials and supplies costs, including costs of computing devices	2 CFR § 200.453	Allowable with restrictions
Memberships, subscriptions, and professional activity costs	2 CFR § 200.454	Allowable with restrictions; unallowable for lobbying organizations
Organization costs	2 CFR § 200.455	Unallowable except federal prior approval
Participant support costs	2 CFR § 200.456	Allowable with prior approval of the federal awarding agency
Plant and security costs	2 CFR § 200.457	Allowable; capital expenditures are subject to § 200.439
Pre-award costs	2 CFR § 200.458	Allowable if consistent with other allowables and with prior approval of the federal awarding agency
Professional services costs	2 CFR § 200.459	Allowable with restrictions
Proposal costs	2 CFR § 200.460	Allowable with restrictions
Publication and printing costs	2 CFR § 200.461	Allowable with restrictions
Rearrangement and reconversion costs	2 CFR § 200.462	Allowable (ordinary and normal)
Recruiting costs	2 CFR § 200.463	Allowable with restrictions
Relocation costs of employees	2 CFR § 200.464	Allowable with restrictions
Rental costs of real property and equipment	2 CFR § 200.465	Allowable with restrictions

Scholarships and student aid costs	2 CFR § 200.466	Not specifically addressed
Selling and marketing costs	2 CFR § 200.467	Unallowable with exceptions
Specialized service facilities	2 CFR § 200.468	Allowable with restrictions
Student activity costs	2 CFR § 200.469	Unallowable unless specifically provided for in the federal award
Taxes (including Value Added Tax)	2 CFR § 200.470	Allowable with restrictions
Termination costs	2 CFR § 200.471	Allowable with restrictions
Training and education costs	2 CFR § 200.472	Allowable for employee development
Transportation costs	2 CFR § 200.473	Allowable with restrictions
Travel costs	2 CFR § 200.474	Allowable with restrictions
Trustees	2 CFR § 200.475	Not specifically addressed

CONFLICT OF INTEREST POLICY
APPLICABLE TO CONTRACTS AND SUBAWARDS OF ORANGE COUNTY SUPPORTED BY
FEDERAL FINANCIAL ASSISTANCE

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I. Scope of Policy

- a. Purpose of Policy. This Conflict of Interest Policy (“*Policy*”) establishes conflict of interest standards that (1) apply when Orange County (“*Unit*”) enters into a Contract (as defined in Section II hereof) or makes a Subaward (as defined in Section II hereof), and (2) meet or exceed the requirements of North Carolina law and 2 C.F.R. § 200.318(c).
- b. Application of Policy. This Policy shall apply when the Unit (1) enters into a Contract to be funded, in part or in whole, by Federal Financial Assistance to which 2 C.F.R. § 200.318(c) applies, or (2) makes any Subaward to be funded by Federal Financial Assistance to which 2 C.F.R. § 200.318(c) applies. If a federal statute, regulation, or the terms of a financial assistance agreement applicable to a particular form of Federal Financial Assistance conflicts with any provision of this Policy, such federal statute, regulation, or terms of the financial assistance agreement shall govern.

II. Definitions

Capitalized terms used in this Policy shall have the meanings ascribed thereto in this Section II: Any capitalized term used in this Policy but not defined in this Section II shall have the meaning set forth in 2 C.F.R. § 200.1.

- a. “*Chief Financial Officer*,” “*Deputy Financial Services Director*,” and “*County Manager*” mean the individuals employed by Orange County and serving in those roles.
- b. “*COI Point of Contact*” means the individual identified in Section III(a) of this Policy.
- c. “*Contract*” means, for the purpose of Federal Financial Assistance, a legal instrument by which the Unit purchases property or services needed to carry out a program or project under a Federal award.
- d. “*Contractor*” means an entity or individual that receives a Contract.
- e. “*Covered Individual*” means a Public Officer, employee, or agent of the Unit.
- f. “*Covered Nonprofit Organization*” means a nonprofit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State of North Carolina primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes, excluding any board, entity, or other organization created by the State of North Carolina or any political subdivision of the State (including the Unit).
- g. “*Direct Benefit*” means, with respect to a Public Officer or employee of the Unit, or the spouse of any such Public Officer or employee, (i) having a ten percent (10%) ownership interest or other interest in a Contract or Subaward; (ii) deriving any income or commission

directly from a Contract or Subaward; or (iii) acquiring property under a Contract or Subaward.

- h. “*Federal Financial Assistance*” means Federal financial assistance that the Unit receives or administers in the form of grants, cooperative agreements, non-cash contributions or donations of property (including donated surplus property), direct appropriations, food commodities, and other Federal financial assistance (except that the term does not include loans, loan guarantees, interest subsidies, or insurance).
- i. “*Governing Board*” means the Board of County Commissioners of the Unit.
- j. “*Immediate Family Member*” means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the Covered Individual is the equivalent of a family relationship.
- k. “*Involved in Making or Administering*” means (i) with respect to a Public Official or employee, (a) overseeing the performance of a Contract or Subaward or having authority to make decisions regarding a Contract or Subaward or to interpret a Contract or Subaward, or (b) participating in the development of specifications or terms or in the preparation or award of a Contract or Subaward, (ii) only with respect to a Public Official, being a member of a board, commission, or other body of which the Public Official is a member, taking action on the Contract or Subaward, whether or not the Public Official actually participates in that action.
- l. “*Pass-Through Entity*” means a non-Federal entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- m. “*Public Officer*” means an individual who is elected or appointed to serve or represent the Unit (including, without limitation, any member of the Governing Board), other than an employee or independent contractor of the Unit.
- n. “*Recipient*” means an entity, usually but not limited to a non-Federal entity, that receives a Federal award directly from a Federal awarding agency. The term does not include Subrecipients or individuals that are beneficiaries of the award.
- o. “*Related Party*” means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the Unit) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.
- p. “*Subaward*” means an award provided by a Pass-Through Entity to carry out part of a Federal award received by the Pass-Through Entity. It does not include payments to a contractor or payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

- q. “*Subcontract*” means mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of a Contract or a Subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.
- r. “*Subcontractor*” means an entity that receives a Subcontract.
- s. “*Subrecipient*” means an entity, usually but not limited to a non-Federal entity, that receives a subaward from a Pass-Through Entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
- t. “*Unit*” has the meaning specified in Section I hereof.

III. COI Point of Contact.

- a. Appointment of COI Point of Contact. The Chief Financial Officer of Orange County shall have primary responsibility for managing the disclosure and resolution of potential or actual conflicts of interest arising under this Policy. In the event that the Chief Financial Officer is unable to serve in such capacity, the Deputy Financial Services Director shall assume responsibility for managing the disclosure and resolution of conflicts of interest arising under this Policy. The individual with responsibility for managing the disclosure and resolution of potential or actual conflicts of interest under this Section III(a) shall be known as the “*COI Point of Contact*”.
- b. Distribution of Policy. The COI Point of Contact shall ensure that each Covered Individual receives a copy of this Policy.

IV. Conflict of Interest Standards in Contracts and Subawards

- a. North Carolina Law. North Carolina law restricts the behavior of Public Officials and employees of the Unit involved in contracting on behalf of the Unit. The Unit shall conduct the selection, award, and administration of Contracts and Subawards in accordance with the prohibitions imposed by the North Carolina General Statutes and restated in this Section III.
 - i. G.S. § 14-234(a)(1). A Public Officer or employee of the Unit Involved in Making or Administering a Contract or Subaward on behalf of the Unit shall not derive a Direct Benefit from such a Contract or Subaward.
 - ii. G.S. § 14-234(a)(3). No Public Officer or employee of the Unit may solicit or receive any gift, favor, reward, service, or promise of reward, including but not limited to a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a Contract or Subaward by the Unit.

- iii. G.S. § 14-234.3. If a member of the Governing Board of the Unit serves as a director, officer, or governing board member of a Covered Nonprofit Organization, such member shall not (1) deliberate or vote on a Contract or Subaward between the Unit and the Covered Nonprofit Corporation, (2) attempt to influence any other person who deliberates or votes on a Contract or Subaward between the Unit and the Covered Nonprofit Corporation, or (3) solicit or receive any gift, favor, reward, service, or promise of future employment, in exchange for recommending or attempting to influence the award of a Contract or Subaward to the Covered Nonprofit Organization.
- iv. G.S. § 14-234.1. A Public Officer or employee of the Unit shall not, in contemplation of official action by the Public Officer or employee, or in reliance on information which was made known to the public official or employee and which has not been made public, (1) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected by such information or other information, or (2) intentionally aid another in violating the provisions of this section.

b. Federal Standards.

- i. Prohibited Conflicts of Interest in Contracting. Without limiting any specific prohibition set forth in Section IV(a), a Covered Individual may not participate in the selection, award, or administration of a Contract or Subaward if such Covered Individual has a real or apparent conflict of interest.
 - 1. Real Conflict of Interest. A real conflict of interest shall exist when the Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward. Exhibit A attached hereto provides a non-exhaustive list of examples of (i) financial or other interests in a firm considered for a Contract or Subaward, and (ii) tangible personal benefits from a firm considered for a Contract or Subaward.
 - 2. Apparent Conflict of Interest. An apparent conflict of interest shall exist where a real conflict of interest may not exist under Section IV(b)(i)(1), but where a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship creates the appearance that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward.
- ii. Identification and Management of Conflicts of Interest.
 - 1. Duty to Disclose and Disclosure Forms
 - a. Each Covered Individual expected to be or actually involved in the selection, award, or administration of a Contract or Subaward

has an ongoing duty to disclose to the COI Point of Contact potential real or apparent conflicts of interest arising under this Policy.

- b. Prior to the Unit's award of a Contract or Subaward, the COI Point of Contact shall advise Covered Individuals expected to be involved in the selection, award, or administration of the Contract or Subaward of such duty.
- c. If the value of a proposed Contract or Subaward exceeds \$250,000, the COI Point of Contact shall collect a Conflict of Interest Disclosure Form contained in Exhibit C (for Contracts) and Exhibit E (for Subawards) from each Covered Individual and file such Conflict of Interest Disclosure Form in records of the Unit.

2. Identification Prior to Award of Contract or Subaward.

- a. Prior to the Unit's award of a Contract or Subaward, the COI Point of Contact shall complete the appropriate Compliance Checklist contained in Exhibit B (for Contracts) and Exhibit D (for Subawards) attached hereto and file such Compliance Checklist in the records of the Unit.

3. Management Prior to Award of Contract or Subaward

- a. If, after completing the Compliance Checklist, the COI Point of Contact identifies a potential real or apparent conflict of interest relating to a proposed Contract or Subaward, the COI Point of Contact shall disclose such finding in writing to County Manager and to each member of the Governing Board. If the Governing Board desires to enter into the proposed Contract or Subaward despite the identification by the COI Point of Contact of a potential real or apparent conflict of interest, it may either:
 - i. accept the finding of the COI Point of Contact and direct the COI Point of Contact to obtain authorization to enter into the Contract or Subaward from (a) if Unit is a Recipient of Federal Financial Assistance, the Federal awarding agency with appropriate mitigation measures, or (b) if Unit is a Subrecipient of Federal Financial Assistance, from the Pass-Through Entity that provided a Subaward to Unit; or
 - ii. reject the finding of the COI Point of Contact and enter into the Contract or Subaward. In rejecting any finding of the COI Point of Contact, the Governing Board shall in

writing document a justification supporting such rejection.

- b. If the COI Point of Contact does not identify a potential real or apparent conflict of interest relating to a proposed Contract or Subaward, the Unit may enter into the Contract or Subaward in accordance with the Unit's purchasing or subaward policy.

4. Identification After Award of Contract or Subaward.

- a. If the COI Point of Contact discovers that a real or apparent conflict of interest has arisen after the Unit has entered into a Contract or Subaward, the COI Point of Contact shall, as soon as possible, disclose such finding to the County Manager and to each member of the Governing Board. Upon discovery of such a real or apparent conflict of interest, the Unit shall cease all payments under the relevant Contract or Subaward until the conflict of interest has been resolved.

5. Management After Award of Contract or Subaward.

- a. Following the receipt of such disclosure of a potential real or apparent conflict of interest pursuant to Section IV(b)(ii)(4), the Governing Board may reject the finding of the COI Point of Contact by documenting in writing a justification supporting such rejection. If the Governing Board fails to reject the finding of the COI Point of Contact within 15 days of receipt, the COI Point of Contact shall:
 - i. if Unit is a Recipient of Federal Financial Assistance funding the Contract or Subaward, disclose the conflict to the Federal awarding agency providing such Federal Financial Assistance in accordance with 2 C.F.R. § 200.112 and/or applicable regulations of the agency, or
 - ii. if Unit is a Subrecipient of Federal Financial Assistance, disclose the conflict to the Pass-Through Entity providing a Subaward to Unit in accordance with 2 C.F.R. § 200.112 and applicable regulations of the Federal awarding agency and the Pass-Through Entity.

V. Oversight of Subrecipient's Conflict of Interest Standards

- a. Subrecipients of Unit Must Adopt Conflict of Interest Policy. Prior to the Unit's execution of any Subaward for which the Unit serves as a Pass-Through Entity, the COI Point of Contact shall ensure that the proposed Subrecipient of Federal Financial Assistance has

adopted a conflict of interest policy that satisfies the requirements of 2 C.F.R. § 200.318(c)(1), 2 C.F.R. § 200.318(c)(2), and all other applicable federal regulations.

- b. Obligation to Disclose Subrecipient Conflicts of Interest. The COI Point of Contact shall ensure that the legal agreement under which the Unit makes a Subaward to a Subrecipient shall require such Subrecipient to disclose to the COI Point of Contact any potential real or apparent conflicts of interest that the Subrecipient identifies. Upon receipt of such disclosure, the COI Point of Contact shall disclose such information to the Federal awarding agency that funded the Subaward in accordance with that agency's disclosure policy.

VI. Gift Standards

- a. Federal Standard. Subject to the exceptions set forth in Section VI(b), a Covered Individual may not solicit or accept gratuities, favors, or anything of monetary value from a Contractor or a Subcontractor.
- b. Exception. Notwithstanding Section VI(a), a Covered Individual may accept an unsolicited gift from a Contractor or Subcontractor of one or more types specified below if the gift has an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of all gifts received by the Covered Individual pursuant to this Section VI(b) does not exceed \$50 in a calendar year:
 - i. honorariums for participating in meetings;
 - ii. advertising items or souvenirs of nominal value; or
 - iii. meals furnished at banquets.
- c. Internal Reporting. A Covered Individual shall report any gift accepted under Section VI(b) to the COI Point of Contact. If required by regulation of a Federal awarding agency, the COI Point of Contact shall report such gifts to the Federal awarding agency or a Pass-Through Entity for which the Unit is a Subrecipient.

VII. Violations of Policy

- a. Disciplinary Actions for Covered Individuals. Any Covered Individual that fails to disclose a real, apparent, or potential real or apparent conflict of interest arising with respect to the Covered Individual or Related Party may be subject to disciplinary action, including, but not limited to, an employee's termination or suspension of employment with or without pay, the consideration or adoption of a resolution of censure of a Public Official by the Governing Board, or termination of an agent's contract with the Unit.
- b. Disciplinary Actions for Contractors and Subcontractors. The Unit shall terminate any Contract with a Contractor or Subcontractor that violates any provision of this Policy.

- c. Protections for Whistleblowers. In accordance with 41 U.S.C. § 4712, the Unit shall not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant: (i) a member of Congress or a representative of a committee of Congress; (ii) an Inspector General; (iii) the Government Accountability Office; (iv) a Treasury or other federal agency employee responsible for grant oversight or management; (v) an authorized official of the Department of Justice or other law enforcement agency; (vi) a court or grand jury; or (vii) a management official or other employee of the Unit, a Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

* * * * *

EXHIBIT A

Examples

<i>Potential Examples of a “Financial or Other Interest” in a Firm or Organization Considered for a Contract or Subaward</i>	<i>Potential Examples of a “Tangible Personal Benefit” From a Firm or Organization Considered for a Contract or Subaward</i>
<p>Direct or indirect equity interest in a firm or organization considered for a Contract or Subaward, which may include:</p> <ul style="list-style-type: none"> - Stock in a corporation. - Membership interest in a limited liability company. - Partnership interest in a general or limited partnership. - Any right to control the firm or organization’s affairs. For example, a controlling equity interest in an entity that controls or has the right to control a firm considered for a contract. - Option to purchase any equity interest in a firm or organization. 	<p>Opportunity to be employed by the firm considered for a contract, an affiliate of that firm, or any other firm with a relationship with the firm considered for a Contract.</p> <p>A position as a director or officer of the firm or organization, even if uncompensated.</p>
<p>Holder of any debt owed by a firm considered for a Contract or Subaward, which may include:</p> <ul style="list-style-type: none"> - Secured debt (e.g., debt backed by an asset of the firm (like a firm’s building or equipment)) - Unsecured debt (e.g., a promissory note evidencing a promise to repay a loan). <ul style="list-style-type: none"> o Holder of a judgment against the firm. 	<p>A referral of business from a firm considered for a Contract or Subaward.</p>
<p>Supplier or contractor to a firm or organization considered for a Contract or Subaward.</p>	<p>Political or social influence (e.g., a promise of appointment to an local office or position on a public board or private board).</p>

EXHIBIT B

COMPLIANCE CHECKLIST FOR OVERSIGHT OF CONTRACT CONFLICTS OF INTEREST

Orange County (“Unit”) has adopted a Conflict of Interest Policy (“Policy”) that governs the Unit’s expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the Chief Financial Officer as the “COI Point of Contact.” The Policy requires the COI Point of Contact to complete this Compliance Checklist to identify potential real or apparent conflicts of interest in connection with proposed Contracts (as defined in Section II) and file the Checklist in the records of the Unit.

Instructions for Completion

1. The COI Point of Contact shall complete Steps 1 through 5 of the Checklist below.
2. If the value of the proposed Contract exceeds \$250,000, the COI Point of Contact shall collect a Conflict of Interest Disclosure Form from each Covered Individual.
3. If the COI Point of Contact identifies a potential real or apparent conflict of interest after completing this Compliance Checklist, the COI Point of Contact shall report such potential conflict of interest to the County Manager and to each member of the Governing Board.

Definitions.

1. *Covered Individual.* Each person identified in Section 1 of this Checklist is a “Covered Individual” for purposes of this Compliance Checklist and the Policy.
2. *Immediate Family Member* means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the Covered Individual is the equivalent of a family relationship.
3. *Related Party* means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the Unit) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.

Step			
1	Identify the proposed Contract, counterparty, and the subject of the Contract.	<u>Name of Contract:</u> <hr/> <u>Name of Counterparty</u> <hr/> <u>Subject of Contract:</u> <hr/> <hr/>	
2	Identify all individuals involved in the selection, award, or administration of the Contract. These individuals are “Covered Individuals”. Ensure that each Covered Individual has been provided with a copy of the Conflict of Interest Policy.		
	<u><i>Public Officials</i></u>	<u><i>Employees</i></u>	<u><i>Agents</i></u>
3	Identify whether any Covered Individual has a (i) financial or other interest in, or (ii) tangible personal benefit from the firm considered for a Contract. [If the estimated Contract amount exceeds \$250,000, ensure that each Covered Individual files a Conflict of Interest Disclosure Form with the COI Point of Contact.]		
Any identified interest in Step 3 is a potential “real” conflict of interest.	<u><i>Public Officials</i></u>	<u><i>Employees</i></u>	<u><i>Agents</i></u>
4	Identify whether any Related Party has a (i) financial or other interest in or (ii) tangible personal benefit from the firm considered from a Contract. If the estimated Contract amount exceeds \$250,000, ensure that each Covered Individual files a Conflict of Interest Disclosure Form with the COI Point of Contact.		
Any identified interest in Step 4 is a potential “real” conflict of interest.	<u><i>Public Officials – Related Party</i></u>	<u><i>Employees – Related Party</i></u>	<u><i>Agents – Related Party</i></u>

<p>5</p>	<p>Identify whether a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship creates the <i>appearance</i> that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract? If yes, explain.</p>		
<p>Any identified interest in Step 5 is a potential “apparent” conflict of interest.</p>	<p><u>Public Officials</u></p>	<p><u>Employees</u></p>	<p><u>Agents</u></p>

COI Point of Contact: _____

Signature of COI Point of Contact: _____

Date of Completion: _____

EXHIBIT C**CONTRACT CONFLICT OF INTEREST DISCLOSURE FORM
FOR OFFICIALS, EMPLOYEES, AND AGENTS**

Orange County (“*Unit*”) has adopted a Conflict of Interest Policy (“*Policy*”) that governs the Unit’s expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the Chief Financial Officer as the “COI Point of Contact.”

The COI Point of Contact has identified you as an official, employee, or agent of the Unit that may be involved in the selection, award, or administration of the following contract: _____ (the “*Contract*”). To safeguard the Unit’s expenditure of Federal Financial Assistance, the COI Point of Contact has requested that you identify any potential real or apparent conflicts of interest in the Firm considered for the award of a Contract. Using the Exhibit A to the Policy as a guide, please answer the following questions:

1. Do you have a financial or other interest in a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

2. Will you receive any tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

3. For purposes of Question 3(a) and 3(b), your “Immediate Family Members” include: (i) your spouse and their parents, (ii) your child, (iii) your parent and any spouse of your parent, (iv) your sibling and any spouse of your sibling, (v) your grandparents or grandchildren, and the spouses of each, (vi) any domestic partner of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with you is the equivalent of a family relationship.

- a. Do you have an Immediate Family Member with a financial or other interest in a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- b. Do you have an Immediate Family Member that will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

4. Do you have any other partner with a financial or other interest in a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

5. Will any other partner of yours receive any tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

6. Does your current or potential employer (other than the Unit) have a financial or other interest in a firm considered for this Contract or will such current or potential employer receive a tangible personal benefit from this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

7. Benefits to Employers

- a. Does a current or potential employer (other than the Unit) of any of your Immediate Family Members have a financial or other interest in a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- b. Will a current or potential employer (other than the Unit) of any of your Immediate Family Members receive a tangible personal benefit from this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

-
- c. Does a current or potential employer (other than the Unit) of any partner of yours have a financial or other interest in a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- d. Will a current or potential employer (other than the Unit) of any partner of yours receive a tangible personal benefit from this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

8. Does any existing situation or relationship create the appearance that you have a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

9. Does any existing situation or relationship create the appearance that any Immediate Family Member of yours has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

10. Does any existing situation or relationship create the appearance that your current or potential employer (other than the Unit) has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

11. Does any existing situation or relationship create the appearance that any current or potential employer (other than the Unit) of any of your Immediate Family Members has a financial or other

interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

12. Does any existing situation or relationship create the *appearance* that any current or potential employer (other than the Unit) of any other partner has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

* * * * *

Sign Name: _____

Print Name: _____

Name of Employer _____

Job Title: _____

Date of Completion: _____

* * * * *

EXHIBIT D

COMPLIANCE CHECKLIST FOR SUBAWARD OVERSIGHT

Orange County (“Unit”) has adopted a Conflict of Interest Policy (“Policy”) that governs the Unit’s expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the Chief Financial Officer as the “COI Point of Contact.” The Policy requires the COI Point of Contact to complete this Compliance Checklist to identify potential real or apparent conflicts of interest in connection with proposed Subawards (as defined in Section II) and file the Checklist in the records of the Unit.

Instructions for Completion

1. The COI Point of Contact shall complete Steps 1 through 5 of the Checklist below.
2. If the value of the proposed Subaward exceeds \$250,000, the COI Point of Contact shall collect a Conflict of Interest Disclosure Form from each Covered Individual.
3. If the COI Point of Contact identifies a potential real or apparent conflict of interest after completing this Compliance Checklist, the COI Point of Contact shall report such potential conflict of interest to the County Manager and to each member of the Governing Board.

Definitions.

1. *Covered Individual.* Each person identified in Section 1 of this Checklist is a “Covered Individual” for purposes of this Compliance Checklist and the Policy.
2. *Immediate Family Member* means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the Covered Individual is the equivalent of a family relationship.
3. *Related Party* means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the Unit) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.

Step			
1	Identify the proposed Subaward, Subrecipient, and the subject of the Subaward.	<u>Name of Contract:</u> <hr/> <u>Name of Counterparty</u> <hr/> <u>Subject of Subaward:</u> <hr/>	
2	Identify all individuals involved in the selection, award, or administration of the Subaward. These individuals are “Covered Individuals”. Ensure that each Covered Individual has been provided with a copy of the Conflict of Interest Policy.		
	<u><i>Public Officials</i></u>	<u><i>Employees</i></u>	<u><i>Agents</i></u>
3	Identify whether any Covered Individual has a (i) financial or other interest in, or (ii) tangible personal benefit from the firm considered for a Subaward. [If the estimated Subaward amount exceeds \$100,000, ensure that each Covered Individual files a Conflict of Interest Disclosure Form with the COI Point of Contact.]		
Any identified interest in Step 3 is a potential “real” conflict of interest.	<u><i>Public Officials</i></u>	<u><i>Employees</i></u>	<u><i>Agents</i></u>
4	Identify whether any Related Party has a (i) financial or other interest in or (ii) tangible personal benefit from the firm considered from a Subaward. If the estimated Subaward amount exceeds \$100,000, ensure that each Covered Individual files a Conflict of Interest Disclosure Form with the COI Point of Contact.]		
Any identified interest in Step 4 is a potential “real” conflict of interest.	<u><i>Public Officials – Related Party</i></u>	<u><i>Employees – Related Party</i></u>	<u><i>Agents – Related Party</i></u>

5	Identify whether a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship creates the <i>appearance</i> that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Subaward? If yes, explain.		
Any identified interest in Step 5 is a potential “apparent” conflict of interest.	<u>Public Officials</u>	<u>Employees</u>	<u>Agents</u>

COI Point of Contact: _____

Signature of COI Point of Contact: _____

Date of Completion: _____

EXHIBIT E**SUBAWARD CONFLICT OF INTEREST DISCLOSURE FORM****FOR OFFICIALS, EMPLOYEES, AND AGENTS**

Orange County (“*Unit*”) has adopted a Conflict of Interest Policy (“*Policy*”) that governs the Unit’s expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the Chief Financial Officer as the COI Point of Contact.

The COI Point of Contact has identified you as an official, employee, or agent of the Unit that may be involved in the selection, award, or administration of the following subaward: _____ (the “*Subaward*”). To safeguard the Unit’s expenditure of Federal Financial Assistance, the COI Point of Contact has requested that you identify any potential real or apparent conflicts of interest in the Firm considered for the award of a Subaward. Using the Exhibit A to the Policy as a guide, please answer the following questions:

1. Do you have a financial or other interest in a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

2. Will you receive any tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

3. For purposes of Question 3(a) and 3(b), your “Immediate Family Members” include: (i) your spouse and their parents, (ii) your child, (iii) your parent and any spouse of your parent, (iv) your sibling and any spouse of your sibling, (v) your grandparents or grandchildren, and the spouses of each, (vi) any domestic partner of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with you is the equivalent of a family relationship.

- a. Do you have an Immediate Family Member with a financial or other interest in a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- b. Do you have an Immediate Family Member that will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

4. Do you have any other partner with a financial or other interest in a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

5. Will any other partner of yours receive any tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

6. Does your current or potential employer (other than the Unit) have a financial or other interest in a firm considered for this Subaward or will such current or potential employer receive a tangible personal benefit from this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

7. Benefits to Employers

- a. Does a current or potential employer (other than the Unit) of any of your Immediate Family Members have a financial or other interest in a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- b. Will a current or potential employer (other than the Unit) of any of your Immediate Family Members receive a tangible personal benefit from this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

-
- c. Does a current or potential employer (other than the Unit) of any partner of yours have a financial or other interest in a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- d. Will a current or potential employer (other than the Unit) of any partner of yours receive a tangible personal benefit from this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

8. Does any existing situation or relationship create the appearance that you have a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

9. Does any existing situation or relationship create the appearance that any Immediate Family Member of yours has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

10. Does any existing situation or relationship create the appearance that your current or potential employer (other than the Unit) has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

11. Does any existing situation or relationship create the appearance that any current or potential employer (other than the Unit) of any of your Immediate Family Members has a financial or other

interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

12. Does any existing situation or relationship create the *appearance* that any current or potential employer (other than the Unit) of any other partner has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

* * * * *

Sign Name: _____

Print Name: _____

Name of Employer _____

Job Title: _____

Date of Completion: _____

* * * * *

Section I:	General Government and Administration
Policy 15.0:	ARPA and other Federal Funds
Reviewed by:	Chief Financial Officer
Approved by:	County Manager
Original Effective Date:	July 1, 2022
Revisions:	

Policy Statement

ARP/CSLFRF funds are subject to the provisions of the federal Uniform Grant Guidance, 2 CFR Sect. 200 (UG), which requires the adoption of certain policies by local governments (the “ARPA Policies”).

Purpose

To approve the ARPA Policies for applicability in Orange County, North Carolina in the expenditure of federal funds including ARP funds.

Applicability

The policies approved herein apply to all Orange County Departments in the expenditure of federal funds, including ARP funds.

ARPA Policies

The following policies, attached hereto, are hereby approved and effective in Orange County:

- 15.1 Allowable Costs and Cost Principles Policy
- 15.2 Conflict of Interest
- 15.3 Program Income Policy
- 15.4 Property Policy
- 15.5 Record Retention Policy
- 15.6 Subaward Policy

These policies may be reviewed annually and updated as needed by the Manager and Chief Financial Officer

ORANGE COUNTY POLICY FOR PROGRAM INCOME RELATED TO THE EXPENDITURE OF AMERICAN RESCUE PLAN ACT FUNDS

WHEREAS, Orange County has received an allocation of funds from the Coronavirus “State Fiscal Recovery Fund” or “Coronavirus Local Fiscal Recovery Fund” (together “CSLFRF”) 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 (“ARPA”).

WHEREAS, Orange County shall comply with the terms of ARPA, and the U.S. Department of Treasury’s (“Treasury”) federal regulations governing the spending of CSLFRF funds, including the [Final Rule](#), and Treasury’s regulations governing expenditures of CSLFRF funds, including the [Award Terms and Conditions](#), [Compliance and Reporting Guidance for the State and Local Fiscal Recovery Funds](#) (together the “Federal regulations”), and any additional guidance Treasury has issued or may issue governing the spending of CSLFRF funds.

WHEREAS, Orange County shall comply with the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part § 200](#) (the “Uniform Guidance”); and

WHEREAS, Orange County shall account for program income per the requirements set forth in the Uniform Guidance, including, but not limited to, [2 C.F.R. § 200.307](#), and as stipulated in [Compliance and Reporting Guidance for the State and Local Recovery Funds](#), which provides: “Recipients of CSLFRF funds should calculate, document, and record the organization’s program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.”

I. PURPOSE AND SCOPE

Orange County enacts the following procedures for its use of program income earned from the expenditure of CSLFRF funds to ensure compliance with the Uniform Guidance, including, but not limited to, 2 C.F.R. § 200.307, the ARP/CSLFRF award, and all applicable Federal regulations governing the use of program income. Orange County (hereafter “Unit” or “Orange County”) agrees to administer program income according to the requirements set forth in this policy and as required by the Federal regulations and State law.

The responsibility for following this policy lies with the Chief Financial Officer and Deputy Financial Services Director, who are charged with the administration and financial oversight of the ARP/CSLFRF award. Questions on the use and/or reporting of program income should be directed to the Orange County Attorney.

II. DEFINITIONS

- a. *ARP/CLSFRF award* means the Federal program governing the use of Coronavirus State and Local Fiscal Recovery Funds as provided in the [Assistance Listing](#) and as

administered by the U.S. Department of Treasury pursuant to the American Rescue Plan Act of 2021 (“ARPA”), Pub. L. No. 117-2 (Mar. 11, 2021).

- b. *CSLFRF funds* means the portion of Federal financial assistance from the Coronavirus State Fiscal Recovery Funds and Coronavirus Local Fiscal Recovery Funds (collectively “CSLFRF”) awarded to Orange County pursuant ARPA.
- c. *Federal award* means the Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101. The Federal award is the instrument setting forth the terms and conditions of the grant agreement, cooperative agreement, or other agreement for assistance.
- d. *Federal awarding agency* means the Federal agency that provides a Federal award directly to a non-Federal entity.
- e. *Federal financial assistance* means the assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions, direct appropriations, food commodities, or other financial assistance, including loans.
- f. *Federal program* means all Federal awards which are assigned a single Assistance Listings Number.
- g. *Non-Federal entity* means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.
- h. *Period of performance* means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. The period of performance for the ARP/CSLFRF award ends December 31, 2026.
- i. *Program income* means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § § 200.307(f).

III. PROGRAM INCOME OVERVIEW

For purposes of this policy, program income is the gross income earned by Orange County that is directly generated by a supported activity or earned as a result of the ARP/CSLFRF award during the period of performance, which closes December 31, 2026. 2 CFR 200.1.

Program income includes, but is not limited to, the following sources of income:

- The collection of fees for services performed.
- Payments for the use or rental of real or personal property.
- The sale of commodities or items fabricated under the Federal award.
- The payment of principal and interest on loans made under the Federal award.

Program income does not include fees or revenue from the following:

- The use of rebates, credits, discounts, and interest earned on any of them.
- Governmental revenues, such as taxes, special assessments, levies, or fines.
- Proceeds from the sale of real property, equipment, or supplies.

IV. USE OF PROGRAM INCOME

[2 C.F.R. § 200.307\(e\)](#) sets forth three methods for how program income may be used: the deduction method, the addition method, and the cost sharing/matching method. Treasury has indicated that program income earned pursuant to expenditures of CSLFRF shall be accounted for pursuant to the addition method [2 C.F.R. § 200.307\(e\)](#). Orange County agrees to add program income to the total award amount and expend it on eligible projects during the period of performance.

V. REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS MADE WITH ARP/CSLFRF FUNDS

Treasury has imposed different requirements on loans of CSLFRF funds under the revenue loss category and loans of CSLFRF under other expenditure categories. Orange County agrees to appropriately account for the repayment of loaned CSLFRF funds according to the ARP/CSLFRF award terms, as follows:

- (1) Loans made under the revenue loss eligibility category.** Loans of CSLFRF funds under the revenue loss eligibility category may be considered to be expended at the point of disbursement to the borrower, and repayments on such loans are not subject to program income requirements. Accordingly, Orange County shall not separately account for the repayment of principal and interest on loans of CSLFRF under the revenue loss eligibility category.
- (2) Non-revenue loss loans (i.e., loans made under the public health emergency/negative economic impacts category and/or the necessary water, sewer, and broadband infrastructure category)**
 - a. **Loans that mature or are forgiven on or before December 31, 2026:** Orange County shall add the repayment of principal and interest (program income) to the ARP/CSLFRF award pursuant to 2 C.F.R. 200.317(e)(2). When the loan is made, Orange County shall report the principal of the loan as an expense. Orange County shall expend the repayment of principal only on eligible uses and is subject to restrictions on the timing of the use of ARP/CSLFRF funds pursuant to the ARP/CSLFRF award.

- b. **Loans with maturities longer than December 31, 2026:** Orange County is not required to separately account for the repayment of principal and interest on loans of CSLFRF with maturities after the ARP/CSLFRF award's period of performance. Orange County shall expend ARP/CSLFRF funds for only the projected cost of the loan. Orange County shall project the cost of the loan by estimating the subsidy cost according to one of the calculation methods outlined in Treasury's [Final Rule FAQs, question 4.9](#) (updated 4/27/22).

- (3) Contributions to revolving loan funds:** Orange County may contribute funds to a revolving loan fund if the loaned SLFRF funds are restricted to financing eligible uses. The amount of CSLFRF funds contributed to a revolving loan fund must be limited to the projected cost of loans made over the life of the revolving loan fund, following the approach described above for loans with maturities longer than December 31, 2026.
 - a. Any contribution of CSLFRF revenue loss funds to a revolving loan fund shall follow the approach of loans funded under the revenue loss eligible use category outlined in Section V, paragraph 1.

VI. ALLOCATION OF PROGRAM INCOME

Orange County shall only expend program income on costs that are reasonable, allocable, and allowable under the terms of the ARP/CSLFRF award. To adhere to these requirements, Orange County shall comply with the cost principles included in 2 C.F.R. § 200, as outlined in Orange County's Allowable Costs Policy. Orange County shall allocate program income to the ARP/CSLFRF award in proportion to the pro rata share of the total funding (e.g., if CSLFRF funds cover half of a project's cost, with general revenue covering the other half, the Unit shall allocate 50% of any program income earned to the ARP/CSLFRF award and account for its use pursuant to § 200.307).

VII. ADDITIONAL PROGRAM INCOME REQUIREMENTS

- (a) **Identifying, Documenting, Reporting, and Tracking.** To ensure compliance with the requirements of program income as outlined by the Federal regulations, the terms and conditions of the ASP/CSLFRF award, and the requirements set forth herein, each department shall identify potential sources of program income and properly report the program income for the period in which it was earned and dispersed.

Program income shall be accounted for separately. Orange County shall not commingle program income earned from programs supported by ARP/CSLFRF funds with the general award of ARP/CSLFRF funds Orange County received from Treasury. Any costs

associated with generating program income revenue shall be charged as expenditures to the ARP/CSLFRF award.

- (b) **Program Income Earned After the Period of Performance.** Orange County shall have no obligation to report program income earned after the period of performance (December 31, 2026). However, Orange County shall report program income expended after the period of performance if that program income was earned on or before December 31, 2026.
- (c) **Subawards.** Orange County agrees to ensure that any subrecipient of ARP/CSLFRF funds abides by the award of the terms and conditions of this policy and is aware that the subrecipient is responsible for accounting for and reporting program income to Orange County on a regular basis (i.e. quarterly, annual, or other) as designated in the agreement with the subrecipient.
- (d) **Compliance with State law.** Program income shall not be expended for purposes prohibited under State or local law.
- (e) **Subject to Audit.** Orange County recognizes that its use of program income may be audited and reviewed for compliance with Federal laws and regulations, State law, and the terms of the ARP/CSLFRF award.

VIII. IMPLEMENTATION OF POLICY

The Chief Financial Officer will adopt procedures to identify potential program income during the project eligibility and allowable cost review, document actual program income, and follow the requirements in this policy related to the treatment of program income.

ORANGE COUNTY PROPERTY POLICY RELATED TO THE EXPENDITURE OF AMERICAN RESCUE PLAN ACT FUNDS

WHEREAS Orange County (hereinafter “County”), has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF); and

WHEREAS the funds may be used for projects within these categories, to the extent authorized by state law.

1. Support COVID-19 public health expenditures, by funding COVID-19 mitigation and prevention efforts, medical expenses, behavioral healthcare, preventing and responding to violence, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to households, small businesses, non-profits, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet; and

WHEREAS the ARP/CSLFRF are subject to the provisions of the federal Uniform Grant Guidance, 2 CFR Sect. 200 (UG), as provided in the [Assistance Listing](#); and

WHEREAS the [Compliance and Reporting Guidance for the State and Local Fiscal Recovery Funds](#) (v3.0 February 2022) provides, in relevant part:

Equipment and Real Property Management. Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.

WHEREAS Subpart D of the UG dictates title, use, management, and disposal of real property, equipment, and supplies acquired in whole or in part with ARP/CSLFRF funds.

I. POLICY OVERVIEW

[Title 2 U.S. Code of Federal Regulations Part 200](#), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance (UG), specifically Subpart D, details post award requirements related to property management of property acquired or updated, in whole or in part, with funds from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF).

2 CFR 200.311 through 2 CFR 200.316 detail property standards related to the expenditure of ARP/CSLFRF funds. Orange County shall adhere to all applicable property standards, as detailed below.

II. DEFINITIONS

The definitions in 2 CFR 200.1 apply to this policy, including the following:

Computing devices: machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. See also the definitions of supplies and information technology systems in this section.

Equipment: tangible [personal property](#) (including information technology systems) having a useful life of more than one year and a per-unit [acquisition cost](#) which equals or exceeds the lesser of the capitalization level established by the County for financial statement purposes, or \$5,000.

Information technology systems: computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also the definitions of computing devices and equipment in this section.

Intangible property: property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Personal property: property other than [real property](#). It may be tangible, having physical existence, or intangible.

Property: [real property](#) or [personal property](#).

Real property: land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

Supplies: all tangible [personal property](#) other than those described in the definition of equipment in this section. A computing device is a supply if the [acquisition cost](#) is less than the lesser of the capitalization level established by the local government for

financial statement purposes or \$5,000, regardless of the length of its useful life. See also the definitions of computing devices and equipment in this section.

III. REAL PROPERTY

Title to Real Property: Title to real property acquired or improved with ARP/CSLFRF funds vests with the County. 2 CFR 200.311(a).

Use of Real Property: Real property acquired or improved with ARP/CSLFRF funds must be used for the originally authorized purpose as long as needed for that purpose, during which time the County must not dispose of or encumber its title or other interests. 2 CFR 200.311(b).

Insurance of Real Property: The County must provide the equivalent insurance coverage for real property acquired or improved with ARP/CSLFRF funds as provided to property owned by the County. 2 CFR 200.310.

Disposition of Real Property: When the County no longer needs real property purchased with ARP/CSLFRF for ARP/CSLFRF purposes, the County must obtain disposition instructions from US Treasury. The instructions must provide for one of the following alternatives:

1. The County retains title after compensating US Treasury. The amount paid to US Treasury will be computed by applying US Treasury's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the County is disposing of real property acquired or improved with ARP/CSLFRF funds and acquiring replacement real property under the ARP/CSLFRF, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
2. The County sells the property and compensates US Treasury. The amount due to US Treasury will be calculated by applying US Treasury's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the ARP/CSLFRF award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the County is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
3. The County transfers title to US Treasury or to a third party designated/approved by US Treasury. The County is entitled to be paid an amount calculated by applying the County's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property. 2 CFR 200.311(c).

IV. EQUIPMENT

Title to Equipment: Title to equipment acquired or improved with ARP/CSLFRF funds vests with the County. 2 CFR 200.313(a).

Use of Equipment: The County must use equipment acquired with ARP/CSLFRF funds for the project for which it was acquired as long as needed, whether or not the project continues to be supported by the ARP/CSLFRF award, and the County must not encumber the property without prior approval of US Treasury. 2 CFR 200.313(a)(1)-(2).

When no longer needed for the original project, the equipment may be used in other activities supported by a Federal awarding agency, in the following order of priority:

1. Activities under a Federal award from the Federal awarding agency which funded the original project, then
2. Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems. 2 CFR 200.313(c)(1).

During the time that equipment is used on the project for which it was acquired, the County must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the project for which it was originally acquired. First preference for other use must be given to other programs or projects supported by US Treasury and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate. 2 CFR 200.313(c)(2).

Noncompetition: The County must not use equipment acquired with the ARP/CSLFRF funds to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment. 2 CFR 200.313(c)(3).

Replacement Equipment: When acquiring replacement equipment, the County may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. 2 CFR 200.313(c)(4).

Management of Equipment: The County will manage equipment (including replacement equipment) acquired in whole or in part with ARP/CSLFRF funds according to the following requirements.

1. The County will maintain sufficient records that include
 - a) a description of the property,
 - b) a serial number or other identification number,
 - c) the source of funding for the property (including the Federal Award Identification Number (FAIN)),
 - d) who holds title,
 - e) the acquisition date,
 - f) cost of the property,
 - g) percentage of Federal participation in the project costs for the Federal award under which the property was acquired,

- h) the location, use and condition of the property, and
 - i) any ultimate disposition data including the date of disposal and sale price of the property.
2. The County will conduct a physical inventory of the property and reconcile results with its property records at least once every two years.
 3. The County will develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft will be investigated by the County.
 4. The County will develop and implement adequate maintenance procedures to keep the property in good condition.
 5. If the County is authorized or required to sell the property, it will establish proper sales procedures to ensure the highest possible return, in accordance with state and federal law.

Insurance of Equipment: The County must provide the equivalent insurance coverage for equipment acquired or improved with ARP/CSLFRF funds as provided to property owned by the County. 2 CFR 200.310.

Disposition of Equipment: When the equipment is no longer needed for its original ARP/CSLFRF purpose, the County may either make the equipment available for use in other activities funded by a Federal agency, with priority given to activities funded by US Treasury, dispose of the equipment according to instructions from US Treasury, or follow the procedures below. 2 CFR 200.313(e).

1. Equipment with a per-item fair market value of less than \$5,000 may be retained, sold or transferred by the County, in accordance with state law, with no additional responsibility to US Treasury;
2. If no disposal instructions are received from US Treasury, equipment with a per-item fair market value of greater than \$5,000 may be retained or sold by the County. The County must establish proper sales procedures, in accordance with state law, to ensure the highest possible return. The County must reimburse US Treasury for its federal share. Specifically, US Treasury is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the ARP/CSLFRF funding percentage of participation in the cost of the original purchase. If the equipment is sold, US Treasury may permit the County to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

3. Equipment may be transferred to US Treasury or to a third-party designated by US Treasury in return for compensation to the County for its attributable compensation for its attributable percentage of the current fair market value of the property.

V. SUPPLIES

Title to Supplies. Title to supplies acquired with ARP/CSLFRF funds vests with the County upon acquisition. 2 CFR 200.314(a).

Use and Disposition of Supplies: If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the ARP/CSLFRF project and the supplies are not needed for any other Federal award, the County must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. 2 CFR 200.314(a).

Noncompetition. As long as the Federal Government retains an interest in the supplies, the County must not use supplies acquired under the ARP/CSLFRF to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute. 2 CFR 200.314(b).

VI. PROPERTY TRUST RELATIONSHIP

Real property, equipment, and intangible property, that are acquired or improved with ARP/CSLFRF funds must be held in trust by the County as trustee for the beneficiaries of the project or program under which the property was acquired or improved. US Treasury may require the County to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property. 2 CFR 200.316.

VII. IMPLEMENTATION OF POLICY

The Chief Financial Officer shall adopt procedures to track all real property, equipment, and supplies (collectively, property) acquired or improved in whole or in part with ARP/CSLFRF funds. At a minimum, those procedures must address the following:

- Ensure proper insurance of property
- Document proper use of property
- Record and maintain required data records for equipment
- Conduct periodic inventories of equipment, at least every two years
- Create processes for replacement and disposition of property
- Establish other internal controls to safeguard and properly maintain property

**Record Retention Policy: Documents Created or Maintained Pursuant to the
ARP/CSLFRF Award**

Retention of Records: The Coronavirus Local Fiscal Recovery Funds (“CSLFRF”) [Award Terms and Conditions](#) and the [Compliance and Reporting Guidance](#) set forth the U.S. Department of Treasury’s (“Treasury”) record retention requirements for the ARP/CSLFRF award.

It is the policy of Orange County to follow Treasury’s record retention requirements as it expends CSLFRF pursuant to the APR/CSLFRF award. Accordingly, Orange County agrees to the following:

- Retain all financial and programmatic records related to the use and expenditure of CSLFRF pursuant to the ARP/CSLFRF award for a period of five (5) years after all CLFRF funds have been expended or returned to Treasury, whichever is later.
- Retain records for real property and equipment acquired with CSLFRF for five years after final disposition.
- Ensure that the financial and programmatic records retained sufficiently evidence compliance with section 603(c) of the Social Security Act “ARPA,” Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- Allow the Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, the right of timely and unrestricted access to any records for the purpose of audits or other investigations.
- If any litigation, claim, or audit is started before the expiration of the 5-year period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved.

Covered Records: For purposes of this policy, records are information, regardless of physical form or characteristics, that are created, received, or retained that evidence Orange County’s expenditure of CSLFRF funds on eligible projects, programs, or activities pursuant to the ARP/CSLFRF award.

Records that shall be retained pursuant to this policy include, but are not limited to, the following:

- Financial statements and accounting records evidencing expenditures of CSLFRF for eligible projects, programs, or activities.

- Documentation of rationale to support a particular expenditure of CSLFRF (e.g., expenditure constitutes a general government service);
- Documentation of administrative costs charged to the ARP/CSLFRF award;
- Procurement documents evidencing the significant history of a procurement, including, at a minimum, the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract cost or price;
- Subaward agreements and documentation of subrecipient monitoring;
- Documentation evidencing compliance with the Uniform Guidance property management standards set forth in 2 C.F.R. §§ 200.310-316 and 200.329;
- Personnel and payroll records for full-time and part-time employees compensated with CSLFRF, including time and effort reports; and
- Indirect cost rate proposals

Storage: Orange County's records must be stored in a safe, secure, and accessible manner. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Departmental Responsibilities: Any department or unit of Orange County, and its employees, who are responsible for creating or maintaining the covered documents in this policy shall comply with the terms of this policy. Failure to do so may subject Orange County to civil and/or criminal liability. Any employee who fails to comply with the record retention requirements set forth herein may be subject to disciplinary sanctions, including suspension or termination.

The Chief Financial Officer is responsible for identifying the documents that Orange County must or should retain and arrange for the proper storage and retrieval of records. The Chief Financial Officer shall also ensure that all personnel subject to the terms of this policy are aware of the record retention requirements set forth herein.

Reporting Policy Violations: Orange County is committed to enforcing this policy as it applies to all forms of records. Any employee that suspects the terms of this policy have been violated shall report the incident immediately to that employee's supervisor. If an employee is not comfortable bringing the matter up with the supervisor, the employee may bring the matter to the attention of the Chief Financial Officer. Orange County prohibits, any form of discipline, reprisal, intimidation, or retaliation for reporting incidents of inappropriate conduct of any kind, pursuing any record destruction claim, or cooperating in related investigations.

Questions About the Policy: Any questions about this policy should be referred to the Chief Financial Officer, who is in charge of administering, enforcing, and updating this policy.

ORANGE COUNTY SUBAWARD POLICY FOR EXPENDITURE OF AMERICAN RESCUE PLAN ACT FUNDS

WHEREAS Orange County, has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF); and

WHEREAS the funds may be used for projects within these categories, to the extent authorized by state law.

1. Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet; and

WHEREAS the ARP/CSLFRF are subject to the provisions of the Federal Uniform Grant Guidance, 2 CFR Part 200 (UG), as provided in the [Assistance Listing \(21.027\)](#); and

WHEREAS the ARP/CSLFRF authorizes Orange County to enter subaward agreements with subrecipients to assist Orange County to carry out the terms of the ARP/CSLFRF; and

WHEREAS if Orange County enters into a subaward as a subrecipient, it acts as a pass-through entity, as described in 2 CFR 200.1; and

WHEREAS the [Compliance and Reporting Guidance for the State and Local Fiscal Recovery Funds](#) (v.3.0 February 2022) provides, in relevant part:

Subrecipient Monitoring. SLFRF recipients that are pass-through entities as described under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

Recipients should note that non-entitlement units of local government (NEUs) are not subrecipients under the SLFRF program. They are SLFRF recipients that will report directly to Treasury.

Recipients should also note that subrecipients do not include individuals and organizations that received SLFRF funds as end users to respond to the negative economic impacts of COVID-19 on these organizations. Such individuals and organizations are beneficiaries and not subject to audit pursuant to the Single Audit Act and 2 C.F.R. Part 200, Subpart F.

Separately or in addition, many recipients may choose to provide a subaward (e.g., via contract or grant) to other entities to provide services to other end—users. For example, a recipient may provide a grant to a nonprofit to provide homeless services to individuals experiencing homelessness. In this case, the subaward to a nonprofit is based on the services that the Recipient intends to provide, assistance to households experiencing homelessness, and the nonprofit is serving as the subrecipient, providing services on behalf of the recipient. Subrecipients are subject to audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements; and

WHEREAS Subpart D of the UG dictates subrecipient and award requirements for expenditure of [ARP/CSLFRF] funds; and

WHEREAS 2 CFR 200.332 states that:

All pass-through entities must:

- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the [required] information at the time of the subaward . . . When some of [the required information] is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward.
- (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring.
- (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described by 2 CFR 200.208.
- (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.
- (e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient, [specific] monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements an achievement of performance goals.
- (f) Verify that every subrecipient is audited as required by [2 CFR 200, Subpart F] when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR 200.501.

- (g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
- (h) Consider taking enforcement action against noncompliant subrecipients as described in 2 CFR 200.339 and in program regulations.

I. POLICY OVERVIEW

[Title 2 U.S. Code of Federal Regulations Part 200](#), (2 CFR 200) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance (UG), specifically Subpart D, defines requirements of pass-through entities initiating subaward agreements with Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF). Orange County (hereinafter the "County") shall adhere to all applicable subaward and monitoring requirements governing the use of ARP/CSLFRF. This policy establishes procedures for classifying, making an award to, and monitoring a sub-recipient consistent with ARP/CSLFRF grant award terms and all applicable federal regulations in the UG.

Responsibility for following these guidelines lies with the Chief Financial Officer and designee, who are charged with the administration and financial oversight of the [ARP/CSLFRF].

II. DEFINITIONS

The definitions in 2 CFR 200.1 apply to this policy, including the following:

Contract: for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on subrecipient and contractor determinations, see [§ 200.331](#). See also the definition of *subaward* in this section.

Contractor: an entity that receives a contract as defined in this section.

Pass-through Entity: a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program. When funds are awarded to a subrecipient the County is the Pass-through Entity

Recipient: an entity, usually but not limited to non-Federal entities that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

Subaward: an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient: an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual

that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

III. SUBRECIPIENT CLASSIFICATION

The County must make a case-by-case determination whether an agreement with another government entity or private entity, that is not a beneficiary, casts the party receiving the funds in the role of a subrecipient or contractor. 2 CFR 200.331.

A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision-making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

The County will use the above criteria to determine if an agreement involving the expenditure of ARP/CSLFRF is a contract or subaward. The Chief Financial Officer will document the determination in the Subrecipient or Contractor Classification Checklist in Appendix 1. ([Appendix 1: Subrecipient or Contractor Classification Checklist.](#))

If the agreement involves a contractor relationship (including a contract for services), the County must follow its UG Procurement Policy when entering into a contract.

If the agreement involves a subrecipient relationship, the County must proceed to Sections IV. through VII. below.

IV. ASSESSMENT OF RISK

Before engaging in a subaward, the County must evaluate a subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward to determine whether to award the subaward and the appropriate subrecipient monitoring.

The Chief Financial Officer will conduct the risk assessment, which will include consideration of the following factors:

- (1) The subrecipient's prior experience with the same or similar subawards;
- (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with 2 CFR 200 Subpart F and the extent to which the same or similar subaward has been audited as a major program;
- (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
- (4) The extent and results of Federal awarding agency monitoring (*e.g.*, if the subrecipient also receives Federal awards directly from a Federal awarding agency). 2 CFR 200.332(b).

The results of the risk assessment must be documented in the Subrecipient Assessment of Risk form in Appendix 2 and will be used to dictate the types and degree of subrecipient monitoring. ([Appendix 2: Subrecipient Assessment of Risk](#)) The County will assign an overall risk level to the subrecipient indicating the following:

Low Risk	Moderate Risk	High Risk
There is a low risk that the subrecipient will fail to meet project or programmatic objectives or incur significant deficiencies in financial, regulatory, reporting, or other compliance requirements.	There is moderate risk that the subrecipient will fail to meet project or programmatic objectives or incur significant deficiencies in financial, regulatory, reporting, or other compliance requirements.	There is high risk that the subrecipient will fail to meet project or programmatic objectives or incur significant deficiencies in financial, regulatory, reporting, or other compliance requirements.

If a proposed subrecipient is deemed high risk, the Chief Financial Officer must provide written justification to proceed with the subaward. The justification must be approved by the Orange County Attorney.

V. SUBRECIPIENT MONITORING

The County will develop and implement a subrecipient monitoring plan for the particular subaward based on the findings of the Subrecipient Assessment of Risk. According to 2 CFR 200.332(d), the monitoring plan must involve:

- (1) Reviewing financial and performance reports required by the pass-through entity.
- (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.

(3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by 2 CFR [200.521](#).
 (4) The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving crosscutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (e.g., has been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section 2 CFR [200.513\(a\)\(3\)\(vii\)](#). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

The County’s monitoring plan will vary based on the overall subrecipient risk assessment as low risk, medium risk, or high risk, detailed as follows:

Subrecipient Deemed Low Risk	Subrecipient Deemed Medium Risk	Subrecipient Deemed High Risk
<ul style="list-style-type: none"> • Payment validations (monthly) • Report reviews (quarterly) • Desk reviews (at least once per year and more frequently if requested by County or subrecipient) • Onsite reviews (upon request of County or subrecipient) • Audit review (yearly) 	<ul style="list-style-type: none"> • More detailed financial reporting • Payment validations (monthly) • Report reviews (bi-monthly) • Desk reviews (within 6 months of project start and every six months thereafter) • Onsite reviews (within 12 months of project start and annually thereafter, or more frequently as requested by County or subrecipient) • Audit review (yearly) • Procedures engagement (if subrecipient not subject to Single Audit Act; yearly) 	<ul style="list-style-type: none"> • More detailed financial reporting • Compliance training (one-time) • Prior approvals for certain expenditures • Payment validations (monthly) • Report reviews (monthly) • Desk reviews (within 3 months of project start and at least quarterly thereafter) • Onsite reviews (within 6 months of project start and bi-annually thereafter, or more frequently as requested by County or subrecipient) • Audit review (yearly) • Procedures engagement (if subrecipient not subject to Single Audit Act; yearly)

Payment validation: All subrecipient documentation for project expenditures must be reviewed by the County for compliance with subaward requirements. Any non-compliant expenditures will be denied and the subrecipient will be provided a reasonable description of the reason for denial and an opportunity to cure the deficiency. For a subrecipient on a reimbursement-based payment structure, the validation will occur before a reimbursement payment is approved. For a subrecipient that received an up-front payment, any funds found to have been expended in violation of the subaward requirements must be repaid to the County.

Report review: A subrecipient must submit quarterly financial and performance reports, based on the schedule set forth in the subaward. The nature and scope of the reports will depend on the project and be spelled out in the subaward. The reports will be reviewed by the Chief Financial Officer. Any deficiencies or other performance concerns will be addressed with the subrecipient in a timely manner and could trigger additional monitoring requirements or other interventions, as specified in the subaward.

Desk review: The County will conduct a meeting to review the subrecipient's award administration capacity and financial management. The meeting may be held virtually or in person. Topics covered will depend on project scope and subrecipient risk assessment and may include governance, budgeting, accounting, internal controls, conflict of interest, personnel, procurement, inventory, and record keeping. The County will produce a report which summarizes the results and any corrective actions if deemed necessary. The report will be shared in a timely manner with the subrecipient.

Onsite review: The County will conduct an on-site meeting at the subrecipient's location to review the subrecipient's project performance and compliance. Topics covered will depend on project scope and subrecipient risk assessment and may include project procurement, data systems, activity and performance tracking, project reporting, inventory, and software systems. The County will produce a report which summarizes the results and any corrective actions deemed necessary. The report will be shared in a timely manner with the subrecipient.

Audit review: The County must verify that every subrecipient is audited as required by [2 CFR 200 Subpart F](#) (Single Audit) when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR [200.501](#). The County must obtain a copy of the subrecipient's Single Audit from the Federal Audit Clearinghouse (FAC). Within six months of the acceptance of the audit report by the FAC, the County will issue a management decision for any audit findings related to the subaward. The decision will clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. (The decision will include reference numbers the auditor assigned to each finding.) The decision will provide a timetable for responsive actions by the subrecipient. Prior to issuing the management decision, the County may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs.

Procedures engagement: Applicable only to subrecipients who are not subject to the Single Audit Act. An auditor will perform specific procedures and report on findings. The scope must be limited to the following compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting. The review will be arranged and paid for by the County. The County will verify completion of the procedures engagement. Within six months of the acceptance of the procedures engagement report, the County will issue a management decision for any findings related to the subaward. The decision will provide a timetable for responsive actions by the subrecipient. Prior to issuing the management decision, the County may request additional information or documentation from the subrecipient, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs.

The specific monitoring plan for each subrecipient, including the type and frequency of reviews, will be detailed in the subaward agreement. For all requirements beyond those listed under the Low Risk category above, the County will notify the subrecipient of the following in the subaward:

- (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.

To implement the monitoring plan, the Chief Financial Officer must perform periodic reviews and document findings in the Subrecipient Monitoring Form ([Appendix 3: Subrecipient Monitoring Form](#)).

VI. SUBRECIPIENT INTERVENTIONS

The County may adjust specific subaward conditions as needed, in accordance with 2 CFR 200.208 and 2 CFR 200.339. If the County determines that the subrecipient is not in compliance with the subaward, the County may institute an intervention. The degree of the subrecipient's performance or compliance deficiency will determine the degree of intervention. All possible interventions must be indicated in the subaward agreement.

The County must provide written notice to the subrecipient of any intervention within thirty 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 subaward compliance or performance deficiency.

Pursuant to 2 CFR 200.208, the written notice must notify the 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.

The following interventions may be imposed on a subrecipient, based on the level of the compliance or performance deficiency:

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

Level 2 Interventions. These interventions may be required, in addition to Level 1 interventions, 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, in addition to Level 1 and 2 interventions, 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

VII. SUBAWARD AGREEMENT & EXECUTION

The subaward agreement will be drafted by the applicable County department using the Subaward Agreement Template. Contract terms and conditions may vary based on several factors, including subrecipient risk assessment findings, as documented in the Subrecipient Assessment of Risk. After review by the Chief Financial Officer and County Attorney the County Manager may fully execute the subaward agreement, subject to any required budget amendments by the County's governing board, preaudit requirements, and any other specific Orange County requirements.

APPENDIX 1: Subrecipient or Contractor Classification Checklist

If Orange County wishes to contract with another government entity or a private entity and use ARP/CSLFRF funds to pay for that contract, the County must determine if the relationship with the outside entity is a contractor or subrecipient. To make this determination the County must review the project proposal, budget classification, and other related proposal documents, as well as engage in discussions with key personnel about the nature of the proposed agreement. The determination of whether a proposed agreement involves a contractor or subrecipient relationship must be recorded on this form and maintained in the project file for the duration of the records retention period for ARP/CSLFRF records.

Instructions: Complete Sections one through three. The section with the greatest number of marked characteristics indicates the likely type of relationship. The substance of the relationship should be given greater consideration than the form of agreement between the County and outside entity. In borderline cases, the County may either provide a written justification for its determination in Section three or, if appropriate, restructure the agreement to more clearly define it as either a contractor or subrecipient relationship.

Name of Outside Entity: _____

Section 1 -- Brief Description of Nature of Proposed Agreement:

Section 1 -- Subrecipient. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship between the recipient and the subrecipient. Subrecipients may have one or more of the following characteristics:

- May determine who may be eligible to receive Federal assistance under the program guidelines. *For example: A subrecipient that identifies mentors and mentees under a mentoring program.*
- Has its performance measured in relation to whether objectives of a Federal program were met? *The recipient will rely upon the subrecipient's data to submit its own performance data to Treasury.*
- Has responsibility for programmatic decision making. *For example: If the recipient funds a subrecipient to develop (or improve) a particular program and the subrecipient will use its own judgment, discretion, and expertise to develop all or part of the program.*
- In accordance with its subaward agreement (which may be in the legal form of a contract), the subrecipient uses the Federal funds to carry out a program for a public purpose specified in authorizing statutes, as opposed to providing goods or services for the benefit of the recipient. *For example: To provide crime- or criminal-justice-related services (and, in the case of crime victims, compensation) to individual members of the public, such as victims of crime, or at-risk youth.*
- The subrecipient will not earn a profit under the agreement.
- The subrecipient is required to contribute cash or in-kind match in support of the subaward.

Section 2 -- Contractor. A contract is for the purpose of obtaining goods and services for the recipient's own use and creates a procurement relationship between the recipient and the contractor. *Entities that include these characteristics are not subject to compliance requirements of the Federal program because of the agreement, though similar requirements may apply for other reasons.* A contractor relationship may have one or more of the following characteristics:

- Provides goods and services within normal business operations.
- Provides similar goods or services to many different purchasers.
- Normally operates in a competitive environment.
- Provides goods or services that are ancillary to the operation of the Federal program.
Examples include but are not limited to: Office equipment, supplies, software licenses, reference books, chemical reagents, cell phones, body-worn cameras, body armor, internet services, cell phone service, website hosting, copying/printing, lodging.
- The entity may earn a profit under the contract.

FINAL DETERMINATION:

- Subrecipient**
- Contractor**

Section 3 – Justification. In determining whether an agreement between a recipient and another non-Federal entity reflects a subrecipient or a contractor relationship, the substance of the relationship is more important than the form of the agreement. Considering the characteristics checked above, provide a written justification for the final determination of either a subrecipient or contractor relationship.

Explanation of Justification Determination:

Signature: _____ **Date:** _____

Print Name and Title: _____

APPENDIX 2: Subrecipient Risk Assessment
Subrecipient Information:

Subrecipient Name	[INSERT SUBRECIPIENT NAME, WHICH MUST MATCH THE NAME ASSOCIATED WITH ITS UNIQUE ENTITY IDENTIFIER]
Subrecipient Unique Entity Identifier:	[INSERT SUBRECIPIENT UNIQUE ENTITY IDENTIFIER]
Brief Description of Subaward Project and Role of Subrecipient:	[INSERT A BRIEF DESCRIPTION OF SUBAWARD PROJECT AND ROLE OF SUBRECIPIENT]
Name and Title of Subrecipient Personnel Providing Information for this Risk Assessment	[INSERT NAME AND TITLE OF SUBRECIPIENT PERSONNEL PROVIDIN INFO. FOR THIS RISK ASSESSMENT]

Choose an item.	Is the entity prohibited from receiving Federal funds due to suspension or debarment per the Excluded Parties List located in the System for Award Management (SAM)? (https://sam.gov/content/home)
Choose an item.	Is the entity in good standing with Orange County? Discuss with appropriate staff.
Choose an item.	Has Data Collection Form on Federal Audit Clearinghouse (FAC) been reviewed? (https://facweb.census.gov/uploadpdf.aspx)
If yes,	List Findings:

Risk Category	Rating Label	Comments
General Assessments		
1. Is the proposed subrecipient entity's (hereinafter "entity") facility, equipment, supplies, and staffing adequate for the needs of the award?	Choose an item.	
2. Has the entity adopted and implemented all required Uniform Guidance policies and procedures?	Choose an item.	
3. Has the entity adopted and implemented records retention, conflict of interest, and nondiscrimination policies, consistent with the ARP/CSLFRF award terms?	Choose an item.	
4. Is the entity properly licensed or certified by a recognized source (i.e., the Internal Revenue Service non-profit determination letter, bonded and insured if performing construction-related activities, etc.)?	Choose an item.	
5. Does the entity have a Code of Ethics policy which is provided to all associated employees?	Choose an item.	
6. Has the entity's management demonstrated a commitment to compliance with the subaward terms and all applicable laws and regulations?	Choose an item.	
Financial Management, Systems, & Personnel		

7. Does the entity have a financial management system that provides records that can identify the sources and application of funds for subaward funded activities?	Choose an item.	
8. Does the entity's financial management system provide for the control and accountability of project funds, property, and other assets?	Choose an item.	
9. What is the current staffing level of the entity?	Choose an item.	
10. Has there been any change in the entity's key staffing positions in the last 2 years?	Choose an item.	
11. What is the entity's staff's experience in performing stated activities in the proposed subaward?	Choose an item.	
12. Does the entity have a formal, written personnel policy that addresses: (a) Pay rates & benefits (b) Time & attendance (c) Leave (d) Discrimination (e) Nepotism (f) Conflict of Interest?	Choose an item.	
13. Does the entity have sufficient internal controls related to the subaward funds?	Choose an item.	
14. Does the entity have sufficient cash flow to carry out the subaward terms?	Choose an item.	
Experience with Other Federal Grants		
15. Has the entity previously done work for the federal government?	Choose an item.	If low or moderate (yes), list the last three agencies and award periods.
(a) If low or moderate (yes) , what is the entity's past performance on meeting federal program outcomes and managing federal funds in compliance with federal regulations?	Choose an item.	
16. Is the entity experienced in managing federal funds of the scope of this proposed subaward?	Choose an item.	
17. Identify any monitoring interventions the entity is currently subject to related to other federal grant awards.	Choose an item.	
18. Does the entity maintain an inventory of federal government property that, at a minimum, identifies purchase date, cost, vendor, description, serial number, location, and ultimate disposition data?	Choose an item.	
Audits		
19. Does the entity have a designated federal cognizant audit agency?	Choose an item.	If low (yes), provide name of audit agency.
20. Has the entity completed a Single Audit in the past five years?	Choose an item.	If low or moderate (yes), provide a copy of the most recent audit and do not complete the rest of the Audit Section.

APPENDIX 3: Subrecipient Monitoring Form

This report reflects the County's substantive assessment of the subrecipient's project implementation and subaward compliance. The County's project manager assigned to the subaward or finance officer must complete this report for each payment validation, report review, desk review, site review, and audit or procedures engagement review during the subaward term (and, as appropriate, after the expiration or termination of the subaward). Upon completion, and following review by the Chief Financial Officer, the original will be filed in the subaward file. Any required subrecipient corrective actions will be detailed in writing and provided to the subrecipient within thirty days of the completion of this report.

I. Subaward Overview (complete this section for all reviews)

STAFF INFORMATION

Reviewed conducted by:		Date:
Type (programmatic, financial, or both)		Date:
Review confirmed by:		Date:

SUBRECIPIENT INFORMATION

Subrecipient Name:	
Subrecipient Program Personnel (who participated in the review):	
Subrecipient Contact Phone Number:	
Subrecipient Fiscal/Audit Personnel (who participated in the review):	
Subrecipient Fiscal Contact Phone Number:	

GRANT REVIEW INFORMATION

Grant	Project #	Award \$	POP Begin	POP End	Review Period	
					Beginning Date	Ending Date

TYPE OF MONITORING

	Type of Monitoring	Date Completed	Comments
<input type="checkbox"/>	Payment Validation (Complete this column, but not the rest of the form.)		
<input type="checkbox"/>	Report Review (Complete this column, but not the rest of the form.)		

<input type="checkbox"/>	Audit or Procedures Engagement Review (Complete this column, but not the rest of the form.)		
<input type="checkbox"/>	Desk Review (If desk review, complete the rest of the form.)		
<input type="checkbox"/>	Onsite Review (If onsite review, complete the rest of the form.)		

II. Desk and Onsite Reviews (complete this section for desk and onsite reviews only)

PRE-MEETING NOTES

List any issues, concerns, or other specialty items for follow-up during review.

- 1.
- 2.

SUMMARY OF PROGRESS

Subrecipient must submit a written summary of the major workplan milestones during the review period at least one week prior to the review. The summary must address 1) number of clients served as compared with projections; 2) staffing; 3) activities undertaken; and 4) significant accomplishments. A copy of that summary will be appended to this written review report.

MONITORING OVERVIEW

PROGRAM IMPLEMENTATION

Indicate milestones met this quarter and identify milestones as scheduled to occur in the following quarter.

ACTIVITIES/PRODUCTS

Identify any reports or products that were submitted during the quarter, and identify those due the following quarter.

CORRECTIVE ACTIONS FROM PRIOR REVIEWS

Indicate actions taken in response to prior review issues.

ASSESSMENT OF QUALITY OF IMPLEMENTATION

Is the project being implemented on schedule? Are the activities impacting the goals and objectives as outlined in approved application?

ISSUES/PROBLEMS

Discuss significant new issues/problems with respect to projected milestones, audits, staffing, client flow, departures from approved goals, late reports, etc.

MONITORING SPECIFICS (Complete all fields that are applicable to the subaward.)

Activity Goals	<input type="checkbox"/> N/A	Yes	No	N/A
Scope of Service, Number of People to be Served, and any Special Terms stated within the Subaward Agreement.				
1. Has there been a change in the activity goals, scope of service, number of people to be served or other special terms as indicated in the Agreement between the Subrecipient and the Recipient?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(a) If yes, was the Recipient informed of the change?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Did the activity conform to any additional or special terms as reflected in the Subaward Agreement?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the subrecipient providing the full scope of services as stated in the application and Subaward Agreement?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Are the actual accomplishments at the time of this review the same as the planned accomplishments? Is the activity achieving the expected quantifiable levels of performance (number of persons served, achieving goals set for clients, etc.) reaching the intended client group?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Is the overall activity performance schedule being met in a timely manner (i.e. goal for number of clients served, expenditure of funds in timely manner, reporting requirements)?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Did the activity operate within the approved budget as detailed in the Subaward Agreement? (i.e., budgetary line items both accurate and realistic for activity expenses; source and use of match funds accurate)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Did the activity funding source change?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Was there a change in make-up or responsibility of staff for the activity?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Were invoices for reimbursement payments submitted with support documentation?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Were reports outlined in the Subaward Agreement submitted on time?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Comments				

General Compliance	Yes	No	N/A
Request a copy of all applicable policies and procedures required by the ARP/CSLFRF award terms and Uniform Guidance.			
11. Does the subrecipient have written policies and procedures to adequately administer the ARP/CSLFRF subaward?			
12. Does the subrecipient have a written conflict of interest policy for their employees?			
13. Are there sufficient internal controls in place to protect against waste, fraud and abuse of Federal funds (segregation of duties, etc.)?			
14. If program income will be generated by the subrecipient, have provisions been made to ensure that it is used in accordance with ARP/CSLFRF and Uniform Guidance requirements?			
What procedures does the subrecipient use to identify and account for federal property purchased with subaward funds?			
Does the subrecipient have adequate safeguards for preventing loss, damage, or theft of property held (inventory control, etc.)?			
Describe any technical assistance/training provided to subrecipient during the project period.			
General Comments			

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Employee Reimbursement	<input type="checkbox"/> N/A	Yes	No	N/A
Request a copy of the employee reimbursement policy, and/or have the subrecipient describe the procedure for approving and documenting expenses that are reimbursed.				
15. Are detailed receipts (i.e., receipts that do not merely show a total, but the detail of what was purchased) provided for reimbursement?				
16. Are reimbursements reviewed and approved by a supervisor or project manager prior to being submitted to the Fiscal Officer/Accounting Staff for payment?				
17. Does the subrecipient have a Reimbursement Policy?				
Examine two or more reimbursements that were paid out of the grant being monitored.				
18. Were the detailed receipts provided to support the amounts requested?				
19. Were the expenses in compliance with grant requirements/guidelines and UG?				
20. If reimbursed for training or conference expenses, was a certificate of attendance or completion, or agenda and brochure provided to support request for reimbursement?				
General Comments				

Equipment	<input type="checkbox"/> N/A	Yes	No	N/A
What is the purchasing procedure for equipment purchased with grant funds? Attach copies of relevant policies and of any purchasing documentation during the review period.				
How is equipment inventoried, insured, and managed? Attach copies of relevant policies and current inventory information.				
What is the procedure for transferring equipment purchased with grant funds to another entity? Attach copies of relevant policies and documentation for any transfers during review period.				
Request an inventory list, physical locate selected items, and examine items to ensure compliance.				
1. Were all transactions conducted in a manner providing full and open competition, and quotations obtained from an adequate number of sources?				
2. Has all equipment indicated as purchased actually been purchased?				
3. Was equipment purchased in accordance with required procurement rules/policies?				
4. Were additions and deletions to the equipment budget made and approved prior to the purchase/procurement dates?				
5. Does a detailed expenditure list indicate any equipment purchased that is not accounted for in the subaward budget?				
6. Is equipment purchased with subaward funds in prior years still in inventory and still being used for subaward purposes?				
7. Has the inventory been updated, and did it account for all items transferred to other entities?				
8. For equipment that was transferred, aside from normal office equipment, was the transferee properly trained on the equipment, and is there a record of that training?				
9. For equipment transferred to other entities; have they added it to their inventory records and is it maintained/used for intended purposes?				
General Comments				

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Financial Management	<input type="checkbox"/> N/A	Yes	No	N/A
What is the Accounting System for each grant program?				
1. Is there a separate accounting for all financial transactions for the subaward?				
2. Is a process in place to prevent co-mingling of funds?				
3. Does the accounting system prevent obligation or expenditure of funds outside the subaward's period of availability?				
4. Are accounting records supported by source documentation?				
5. Were any illegal transfers or unusual activities noted during a review of the subrecipient's fund activity reports?				
6. Does the system provide for prompt and timely recording and reporting of all financial transactions?				
7. Is proper Fiscal record retention being followed (through Dec. 31, 2031)?				
What is the process for approval and payment of expenditures and posting to the General Ledger?				
8. Are subaward costs identified as eligible prior to encumbering funds and placing an order?				
9. Were the applicable State/Federal suspension and debarment listings consulted prior to doing business with a vendor and/or contractor?				
10. Are all invoices reviewed by the project director for eligibility and marked 'okay to pay' prior to being submitted to the fiscal office or accounting staff for payment?				
11. Are disbursements fully support by invoices, requisitions, purchase orders, or similar documents?				
12. Are cancelled checks or warrants available for review?				
13. Were all subaward funds that were received disbursed within the allowable timeframe?				
What is the reconciliation process, and how are errors or adjustments handled?				
14. Does the subrecipient perform routine reconciliations of its records against the General Ledger? By whom and how often?				
15. Does the subrecipient have sufficient internal controls related to reconciliations?				
16. Were actions taken to promptly correct any errors and/or resolve issues?				
General Comments				

Other Direct Costs	<input type="checkbox"/> N/A	Yes	No	N/A
How are rent, utilities, and other items allocated for the program?				
1. Are rent payments documented by a copy of the lease agreement, and canceled checks or receipts?				
2. Are receipts, bills, and invoices properly maintained?				
3. Is the actual rate and method being charged to the grant consistent with the rate and method approved in the budget?				
4. Are costs shared with other programs or funding sources? If yes, how are costs allocated?				
General Comments				

Personnel/Direct Labor	<input type="checkbox"/> N/A	Yes	No	N/A
Describe the payroll process and who is paid by the subaward.				
1. Are personnel files maintained for each employee that include current job descriptions, performance and evaluations, and changes in pay rates?				
2. Are time sheets, activity reports, or payroll files available for review? These documents should clearly show the effort toward the subaward charged.				
3. Are individual employee time sheets and attendance records:				
• Prepared and signed by each employee for each pay period?				
• Reviewed and signed by each employee's supervisor?				
• Reconciled to the payroll master ledger?				
4. Are all authorized staff positions filled for the approved budget?				
5. Are staff salaries consistent with the approved budget?				
6. Are fringe benefits the same as what is listed in the approved budget?				
General Comments				

Reporting Requirements	<input type="checkbox"/> N/A	Yes	No	N/A
Subrecipients are required to report on progress toward implementing plans described in their application/proposal.				
1. Progress reports must be submitted based on approved work plan. Have all of the reports been submitted for this reporting period?				
2. Are there any outstanding data elements that must be tracked and reported by the subrecipient? If so, detail the plan for the subrecipient to comply with this requirement.				
Comments				

Supplies & Materials	<input type="checkbox"/> N/A	Yes	No	N/A
Explain the process of allocating supply costs to the subaward.				
1. Are purchases of supplies approved and well documented by quotes, invoices, or receipts?				
2. Are expenditures for supplies consistent with the approved budget?				
3. Is there a substantial supply inventory remaining at the project termination date?				
4. Were all transactions conducted in a manner providing full and open competition, and quotations obtained from an adequate number of sources?				
General Comments				

Travel/Vehicle Mileage	<input type="checkbox"/> N/A	Yes	No	N/A
Request a copy of the subrecipient's travel policy or have them describe the procedure for approving and documenting travel expenses.				
1. Is employee travel approved in advance by a supervisor or project manager?				
2. Are travel expenditures documented with expenses reports and/or detailed receipts (i.e., receipts do not merely show total but detail of what was purchased)?				

3. Are travel expenditures appropriately supported within subaward guidelines and in the approved budget?			
4. Are mileage reimbursements supported by a mileage log or similar documentation?			
General Comments			

Single Audit Review	<input type="checkbox"/> N/A	Yes	No	N/A
Obtain a copy of the subrecipient's most recent audit from FAC. Attach it to this review form.				
1. Was the Major Programs' Compliance Opinion in the Summary of Auditor's Results in the Schedule of Findings qualified?				
2. Were there any findings and/or questioned costs for federal awards in the Schedule of Findings? Were any other operational issues such as the handling of assets, lack of policies and procedures, contract non-compliance, etc., which would impact Federal dollars received?				
3. Were past audit findings and/or questioned costs for federal awards satisfactorily resolved?				
4. Was any control issue identified which would impact the processing of Federal grant dollars (i.e., control weaknesses)?				
General Comments <i>(If yes response to questions 1, 2, and/or 4, then comment on the issues noted from the audit and how this was addressed during the onsite review).</i>				

RECOMMENDED CHANGES AND/OR NEW MONITORING INTERVENTIONS

Please document any recommendations for financial, programmatic, or other changes. Indicate if further monitoring interventions are warranted.

APPENDIX 4: Subaward Agreement Template

DRAFT AGREEMENT—CONSULT COUNTY ATTORNEY FOR FINAL TEMPLATE

American Rescue Plan Act of 2021 Coronavirus State and Local Fiscal Recover Funds Subaward Agreement
 Between
 Orange County, North Carolina
 and
 [NAME OF SUBRECIPIENT]

Article I. Overview.

Section 1.1. Parties. The parties to this agreement are Orange County, North Carolina, a body politic and political subdivision of the State of North Carolina (“County”) and [FULL LEGAL NAME OF SUBRECIPIENT], a North Carolina [SUBRECIPIENT ENTITY TYPE (EG., NON-PROFIT CORPORATION, FOR-PROFIT CORPORATION, GOVERNMENT ENTITY, ETC.)) (“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 [DOLLAR VALUE ALLOCATED TO LOCAL GOVERNMENT] 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 200.331(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 [START DATE] (the “Effective Date”) through [END DATE] (“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 (Approved Activities)**.

Section 2.2. Budget. Subrecipient shall perform the Approved Activities 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, Approved Activities, or Approved Budget without the prior written approval of County.

Article III. Compensation.

Section 3.1. Payment of Funds. County agrees to reimburse Subrecipient for costs actually incurred and paid by Subrecipient in accordance with the Approved Budget and for the performance of the Approved Activities under this Agreement in an amount not to exceed \$[] (“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 Approved Activities 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 Approved Activities 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. Invoices. On or before the twentieth (20th) day of each month and in any event no later than thirty (30) days after the earlier of the expiration or termination of this Agreement, Subrecipient shall submit invoices and associated receipts, in a format dictated by County, for the most recent month ended, to County's [NAME DEPARTMENT HERE AND INDICATE HOW SUBRECIPIENT MUST SUBMIT INFO (MAIL, EMAIL, ETC.)], setting forth actual expenditures of Subrecipient in accordance with this Agreement. Within ten (10) working days from the date it receives such invoice, County may disapprove the requested reimbursement claim. If the reimbursement claim is so disapproved, County shall notify Subrecipient as to the disapproval. A decision by County to disapprove a reimbursement claim is final. There is no appeal process for subrecipient. If County approves payment, then County will disburse the funds without further notice.

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 Approved Activities 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 reimburse Subrecipient for documented expenditures incurred during the Agreement Term that are: (i) reasonable and necessary to carry out the scope of Approved Activities 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. [IF THE SUBRECIPIENT HAS A NICRA WITH ANOTHER FEDERAL AGENCY THAT IS HIGHER THAN THE DE MINIMIS INDIRECT RATE OF 10%, YOU MUST USE THE SUBRECIPIENT'S NICRA TO CALCULATE ITS INDIRECT RATE. SEE 2 CFR 200.332(a)(4)(ii)]

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, in accordance with the following schedule, which may be amended from time to time:

<u>REPORT</u>	<u>DEADLINE</u>
[INSERT APPLICABLE REPORT REQUIREMENTS HERE]	[INSERT APPLICABLE DEADLINES]

SEE TREASURY COMPLIANCE AND REPORTING
GUIDANCE,]

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 shall 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 Approved Activities 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*.

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.

Section. 5.4. Procurement Requirements.

(a) **Federal.** Consistent with UG compliance requirements, including the standards in 2 CFR 200.318 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(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. 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(c). Subrecipient shall immediately disclose in writing to County any potential conflict of interest affecting the awarded funds in accordance with 2 CFR 200.112.
 4. 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.
 5. 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 Approved Activities 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 Approved Activities 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 C.F.R. §200.324, County will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.327 as well as Appendix II to 2 C.F.R. 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) **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 not enter a subaward without prior written approval from County.

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. When such property, equipment, or supplies are acquired, improved, or purchased subrecipient shall comply with the Orange County Property Policy Related to the Expenditure of American Rescue Plan Act Funds.

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. When such program income is earned Subrecipient shall comply with the Orange County Policy for Allowable Costs and Cost Principles for Expenditure of American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds.

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 U.S.C. 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 display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [LOCAL GOVERNMENT NAME], North Carolina by the U.S. Department of the Treasury."

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. Drug-free Workplace Requirements. Subrecipient certifies compliance with 2 CFR 182.

Section 5.21. Stevens Amendments Requirements. Subrecipient shall identify that federal assistance funds were used to fund Approved Activities 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 Approved Activities 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 **Exhibit E (Subaward Policy)**. The following specific monitoring activities apply to this Agreement:

- (a) Payment validations (monthly)
- (b) Report reviews (quarterly)
- (c) Desk reviews (at least once per year and more frequently if requested by County or Subrecipient)
- (d) Onsite reviews (upon request of County or Subrecipient)
- (e) Audit review (yearly)

Additional monitoring activities shall be included for subrecipients deemed to be medium or high risk. Consult with the Chief Financial Officer and County Attorney to determine appropriate additional monitoring activities.

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.

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

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

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

Section 6.4. Records Retention and Access. Subrecipient shall maintain all records, books, papers and other documents related to its performance of Approved Activities 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 Approved Activities 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 F (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 Without Cause. County may terminate this Agreement for any reason, in its sole discretion, by providing Subrecipient with thirty (30) days prior written notice.

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.

Article VIII. General Conditions.

Section. 8.1. Indemnification. To the extent permitted by law, Subrecipient agrees to indemnify and hold harmless County, and any of its officers, agents and employees, and the Federal Government from any claims of third parties arising out of any act or omission of Subrecipient in connection with the performance of this Agreement.

Section. 8.2. Insurance. Subrecipient shall obtain, at its sole expense, Commercial General Liability Insurance, Automobile Insurance, Workers' Compensation Insurance, and any additional insurance as may be required by County's Risk Manager as such insurance requirements are described in the Orange County Risk Transfer Policy and Orange County Minimum Insurance Coverage Requirements (each document is incorporated herein by reference and may be viewed at http://www.orangecountync.gov/departments/purchasing_division/contracts.php.) If County's Risk Manager determines additional insurance coverage is required such additional insurance shall consist of _____ (if no additional insurance required mark N/A as being not applicable). Subrecipient shall not commence work until such insurance is in effect and certification thereof has been received by the County's Risk Manager.

County may require higher limits if warranted by the nature of this Agreement and the type of activities to be provided. The insurer must provide County with a Certificate of Insurance reflecting the coverages required in this Section. All Certificates of Insurance shall reflect thirty (30) days written notice by the insurer in the event of cancellation, reduction, or other modification of coverage. In addition to this notice requirement, Subrecipient must provide County prompt written notice of cancellation, reduction, or material modification of coverage of insurance. If Subrecipient fails to provide such notice, the Subrecipient assumes sole responsibility for all losses incurred by County for which insurance would have provided coverage. The insurance policies must remain in effect during the term of this Agreement.

Subrecipient shall name County as an additional insured except as to workers compensation insurance and it is required that coverage be placed with an "A" rated insurance company acceptable to County. If Subrecipient fails at any time to maintain and keep in force the required insurance, County may cancel and terminate the Agreement without notice.

Section. 8.3. Venue and Jurisdiction. County and Subrecipient agree that they executed and performed this Agreement in Orange County, North Carolina. This Agreement will be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement is the appropriate division of the North Carolina General Court of Justice in Orange County. Such actions may not be commenced in, nor removed to, federal court unless required by law.

Section. 8.4. Nonwaiver. No action or failure to act by County constitutes a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, except as specifically agreed in writing.

Section. 8.5. Limitation of County Authority. Nothing contained in this Agreement may be deemed or construed to in any way stop, limit, or impair County from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

Section. 8.6. Severability. If any provision of this Agreement is determined to be unenforceable in a judicial proceeding, the remainder of this Agreement will remain in full force and effect to the extent permitted by law.

Section. 8.7. Assignment. Subrecipient may not assign or delegate any of its rights or duties that arise out of this Agreement without County’s prior written consent. Unless County otherwise agrees in writing, Subrecipient and all assigns are subject to all County’s defenses and are liable for all Subrecipient’s duties that arise from this Agreement and all County’s claims that arise from this Agreement.

Section. 8.8. Integration. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. 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 Agreement.

Section. 8.9. Notices. All notices and other communications required or permitted by this Agreement must be in writing and must be given either by personal delivery, approved carrier, email, or mail, addressed as follows:

(a) If to the County:
Attn:
P.O. Box 8181
Hillsborough, NC 27278

(b) If to the Subrecipient:
[ADDRESS HERE]
[EMAIL HERE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly constituted legal representatives and is effective as of the Effective Date.

ORANGE COUNTY:

By: _____

SUBRECIPIENT:

By: _____

Printed Name and Title

Exhibit A: Subaward Data

Subrecipient Name	[Insert Subrecipient name, which must match the name associated with its unique entity identifier]
Subrecipient Unique Entity Identifier:	[Insert Subrecipient Unique Entity Identifier]
Federal Award Identification Number (FAIN):	[Insert Federal Award Identification #]
Federal Award Date of Award to the Recipient by the Federal Agency:	[Insert date]
Subaward Period of Performance Start Date:	[Insert date]
Subaward Period of Performance End Date:	[Insert date]
Amount of Federal Funds Obligated by this Action by the Pass-Through Entity to the Subrecipient:	[Insert Total Agreement Funds]
Total Amount of Federal Funds Obligated to the Subrecipient by the Pass-Through Entity Including the Current Obligation:	[If additional federal awards have been awarded to the Subrecipient, insert total amount, including the Total Agreement Funds specified above]
Total Amount of the Federal Award Committed to the Subrecipient by the Pass-Through Entity:	[Insert amount]
Federal Award Project Description:	[Insert description]
Name of Federal Awarding Agency:	Department of Treasury
Name of Pass-Through Entity:	[LOCAL GOVERNMENT NAME], North Carolina
Contact Information for [LOCAL GOVERNMENT NAME] Authorizing Official:	[Insert contact information]
Contact Information for City Project Manager:	[Insert contact information]
CFDA Number and Name:	21.027- Coronavirus State and Local Fiscal Recovery Funds
Identification of Whether Subaward is R&D:	Not R&D
Subrecipient Indirect Costs:	See <u>Exhibit C</u> – Approved Budget

Exhibit B: Approved Activities

[DESCRIBE IN DETAIL WHAT THE SUBRECIPIENT WILL DO WITH THE MONEY]

Exhibit C: Approved Budget

Consult the County's Allowable Costs and Cost Principles Policy and the ARP/CSLFRF Final Rule for specific directives and limitations on cost items.

REVENUES			Total Revenue
[LOCAL GOVERNMENT NAME] Coronavirus State and Local Fiscal Recovery Funds Awarded		\$	
Budget Cost Categories		OMB Uniform Guidance Federal Awards Reference 2 CFR 200	Total Expenditures
1.	Personnel (Salary and Wages)	\$	
2.	Fringe Benefits	\$	
3.	Travel	\$	
4.	Equipment	\$	
5.	Supplies	\$	
6.	Contractual Services and Subawards	\$	
7.	Consultant (Professional Service)	\$	
8.	Construction	\$	
9.	Occupancy (Rent and Utilities)	\$	
10.	Research and Development (R&D)	\$	
11.	Telecommunications	\$	
12.	Training and Education	\$	
13.	Direct Administrative Costs	\$	
14.	Miscellaneous Costs	\$	
a.	Advertising and public relations costs		
b.	Materials and supplies costs, including costs of computing devices		
15.	<i>Add additional cost items as needed</i>		
16.	Total Direct Costs (add lines 1-15)	\$	
17.	Total Indirect Costs		
	Rate %:	\$	
	Base*:		
18.	Total Costs Federal Grant Funds (Lines 16 and 17)	\$	
MUST EQUAL REVENUE TOTALS ABOVE			

* The Base is modified direct total costs (MTDC) of the subaward project. Pursuant to 2 CFR 200.68, MTDC means all direct salaries and wages, applicable fringe benefits, materials and [supplies](#), services, travel, and up to the first \$25,000 of each [subaward](#) (regardless of the [period of performance](#) of the [subawards](#) under the award). [MTDC](#) excludes [equipment](#), [capital expenditures](#), charges for patient care, rental costs, tuition remission, scholarships and fellowships, [participant support costs](#) and the portion of each [subaward](#) in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the [cognizant agency for indirect costs](#).

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: Subaward Policy

[APPEND THE COUNTY'S SUBAWARD POLICY HERE.]

Exhibit F: Key Personnel

[CONTACT INFORMATION FORM]

COUNTY INFORMATION	
Administrative Address:	
Invoice Address:	
Project Manager Name:	
Project Manager Title:	
Project Manager Email:	
Project Manager Phone:	
Fiscal Officer Name:	
Fiscal Officer Title:	
Fiscal Officer Email:	
Fiscal Officer Telephone:	
SUBRECIPIENT INFORMATION	
Administrative Address:	
Invoice Address:	
Project Manager Name:	
Project Manager Title:	
Project Manager Email:	
Project Manager Telephone:	
Fiscal Officer Name:	
Fiscal Officer Title:	
Fiscal Officer Email:	
Fiscal Officer Telephone:	

**ORANGE COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date: August 1, 2022

**Action Agenda
Item No. 2**

SUBJECT: Ratification of County Manager's Execution of an Insurance Coverage Agreement with Travelers Insurance and Approval of a Letter of Credit Agreement

DEPARTMENT: County Attorney's Office

ATTACHMENT(S):

Executed Insurance Coverage Agreement with Travelers
Standby Letter of Credit Application and Agreement
Letter of Credit – Travelers

INFORMATION CONTACT:

John Roberts, County Attorney, (919) 245-2318
Gary Donaldson, Chief Financial Officer, (919) 245-2450
Alisa Cornetto, Risk Manager, (919) 245-2155

PURPOSE: To ratify the County Manager's execution of an agreement with Travelers Indemnity Company for Casualty and Workers' Compensation insurance coverage and approve a Letter of Credit for Travelers Indemnity Company.

BACKGROUND: As part of a comprehensive risk management program, the County purchases liability, property, and workers compensation insurance. Those programs had been purchased through the North Carolina Association of County Commissioners' Risk Pools. The County marketed these programs in 2022 and has moved these programs to Travelers Indemnity Company (Travelers).

The Travelers coverage offered a premium savings of over \$250,000, provided more robust risk control and claim advocacy, and provided access to a state of the art risk management information system. The Travelers proposal also included a dedicated, as opposed to shared, policy limits for each claim category with the same or better coverage limits and deductibles compared to the County's former provider. Due to the timing of this conversion, the County Manager signed the agreement to purchase this insurance coverage from Travelers. This agenda item seeks ratification of the County Manager's signature from the Board of Commissioners.

In addition, Travelers is requiring the County to secure a \$300,000 letter of credit to guarantee the County is in a position to meet its financial obligations under the terms and conditions of the policy. This amount is equivalent to the per claim deductible for the Workers Compensation

coverage. The letter of credit would only be accessed if the County failed to pay a part or all of the deductible. This practice is consistent with industry standards for loss programs.

The County's current bank, Truist, will provide a letter of credit not to exceed \$500,000 for a rate of 0.5% if it needs to be accessed by Travelers. Even though the FY2022-23 Budget contains sufficient funding to pay deductibles, Truist is requiring Board approval of the letter of credit since the bank considers it a debt instrument.

FINANCIAL IMPACT: There is no immediate financial impact. However, if the County failed to pay a deductible, Travelers would have the ability to make a claim against the County's letter of credit, and the County would be responsible to pay Truist Bank that amount with interest accumulating at a rate of 0.5%.

SOCIAL JUSTICE IMPACT: There is no Orange County Social Justice Goal impact associated with this item.

ENVIRONMENTAL IMPACT: There is no Orange County Environmental Responsibility Goal impact associated with this item.

RECOMMENDATION(S): The Manager recommends the Board:

- 1) Ratify the County Manager's execution of an agreement with Travelers Indemnity Company for insurance coverage;
- 2) Authorize the County Manager or her designee, the Chief Financial Officer, to execute the required \$300,000 Letter of Credit for Travelers Indemnity Company;
- 3) Authorize the County Manager or her designee, the Chief Financial Officer, to execute any renewals, amendments, or extensions, and other associated legal documents as necessary to meet Travelers Indemnity Company's Letter of Credit and Guaranty Agreement requirements;
- 4) Authorize the County Manager or her designee, the Chief Financial Officer, to make changes to any of the legal documents prior to execution, consistent with this approval; and
- 5) Authorize the County Manager or her designee, the Chief Financial Officer, to sign and submit an application to Truist Bank for a Letter of Credit cap not to exceed \$500,000.

INSURANCE PROGRAM AGREEMENT



Between

THE TRAVELERS INDEMNITY COMPANY

("Travelers")

And

Orange County

("Insured")

EFFECTIVE DATE: 07/01/2022

WHEREAS, the Insured wishes to obtain the Policies from Travelers, which policies contain loss sensitive components; and

WHEREAS, Travelers is willing to issue the Policies pursuant to the Collateral and Payment requirements in this Insurance Program Agreement; and

WHEREAS, Travelers and Insured (collectively hereinafter "the Parties") wish to enter into an agreement for the receipt and provision of insurance and insurance-related services; and

WHEREAS, this Agreement is effective on the Effective Date listed above and remains in effect until terminated pursuant to its terms; and

WHEREAS, this Agreement applies to each Program Term for which a Program Exhibit is attached and to all Obligations regardless of the Program Term from which the Obligation arises.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

A. DEFINITIONS

Capitalized terms in this Agreement are either defined in this "Definitions" section or are defined elsewhere in this Agreement (including the Exhibits).

"Agreement" means this Insurance Program Agreement between the Parties, and includes Exhibits, Integrated Agreements and amendments thereto, if any.

"Collateral" means security for your Obligations which you are required to provide to us pursuant to this Agreement and which is acceptable to us in form, content, issuer and amount.

"Insured", "you", and "your" means the Insured listed above and each of its affiliates, divisions, subsidiaries, general partners and limited partners who are named insureds on any of the Policies

referenced in the Program Exhibit(s) and, with respect to workers compensation insurance, who are employers referenced in Item 1. of the Information Pages of the workers compensation Policies, and each of its predecessors and successors, and includes those affiliates, divisions, and subsidiaries who are or were named as the principal on any surety bonds identified in the Program Exhibit(s).

“Maximum Billed Losses” is the most we will charge and the most you will pay for losses listed in the applicable Program Exhibit, and is, subject to the formula listed in the applicable Program Exhibit. Claim Handling Charges, premium tax, surcharges and assessments associated with these losses are not part of the Maximum Billed Losses and will continue to be billed and payable until the Maximum Billed Losses amount is reached.

“Minimum Billed Amount” is the least we will charge you for the Policies in a Program Term, subject to the formula listed in the applicable Program Exhibit.

“Obligations” means any indebtedness or liability of any kind owed or owing by you to us, whether direct or indirect, joint or several, now existing or hereafter arising in connection with this Agreement, the Policies, any past agreement letters or past or future insurance program agreements, surety bonds, any agreements incorporated herein by reference, and any other similar agreements, including, but not limited to, any indemnity or self-funded retention agreements between you and United States Fidelity and Guaranty Company, Discover Property & Casualty Insurance Company or any of our other affiliates, including, but not limited to, attorneys’ fees incurred by us in enforcing your Obligations.

“Plan Adjustment” means the periodic valuation of your Obligations pursuant to the terms set forth in the Payment Schedule of the applicable Program Exhibit.

“Plan Losses” means all losses actually paid within the Amounts Retained By You layer applicable to a Policy. The Amounts Retained By You section of the applicable Program Exhibit denotes whether Allocated Loss Adjustment Expense or Defense Expenses are included in or are in addition to Plan Losses.

“Policy(ies)” means the insurance policies listed in the applicable Program Exhibit(s).

“We”, “our” and “us” means Travelers and all if its property casualty insurance and service subsidiaries and affiliates, but only to the extent such companies have issued Policies or are performing services for you under this Agreement.

B. PAYMENT

You agree to pay all your Obligations when due according to all applicable Program Exhibits. This Payment Section sets forth the manner in which certain of your Obligations will be paid. All the dates and frequencies referenced herein are set forth in the applicable Program Exhibit(s).

1. **Rating Plan Obligations, Taxes, Surcharges and Assessments.** The estimated rating plan obligations, taxes, surcharges and assessments are set forth in the applicable Program Exhibit. We will credit to you any overpayment of these charges as may be subsequently determined by audit and/or other adjustment as provided for in this Agreement, the Policies or applicable



state law or regulation. If an additional amount is determined to be due, you will pay any additional amount following our notice to you that additional funds are required. You agree to pay any additional surcharges, taxes, or other assessments, whether or not known at the time of this Agreement, as required by law.

2. **Loss Fund Requirements.** The amount of any loss fund requirements is set forth in the applicable Program Exhibit. We reserve the right to increase the amount required, and you agree to pay such additional amount following our notice to you that additional funds are required.
3. **Plan Losses, Claim Handling Charges and Other Fees.** You agree to pay all Plan Losses, Claim Handling Charges, and annual Premium Tax, Surcharges and Assessments (if any) associated with your Policies pursuant to the Payment Schedule in any applicable Program Exhibit.
4. **Plan Adjustments.** You agree to pay all Plan Adjustments, subject to any minimum or maximum billed amounts agreed to by the Parties, on the commencement date, and according to the billing frequency and basis, as set forth in the applicable Program Exhibit.
5. **Services.** You agree to pay all expenses for Supplemental Services provided pursuant to the Supplemental Services section of the applicable Program Exhibit.
6. You agree to the terms and conditions for billing and payment as set forth in all applicable supplements, exhibits and/or schedules.

You agree to pay each bill or invoice that is submitted to you within 30 days of the date of such bill or invoice, unless other terms are set forth in the bill or invoice or as otherwise agreed to between you and us. All payments will be in U.S. Dollars. Either of the Parties may offset any balance due to it under this Agreement, or any other property casualty agreements heretofore or hereafter entered into between you and us.

C. COLLATERAL AND REMEDIES

1. In order to assure payment and performance of your Obligations to us, you agree to pledge, deliver to us and maintain Collateral in the amount, form, content and issuer acceptable to us and on or before any due date(s) as set forth in the applicable Program Exhibit and pursuant to the terms of the Collateral Exhibit, if any. You acknowledge that we would not provide the Policies or enter into this Agreement without the Collateral. We will hold the Collateral until we determine all of your Obligations to us are final, or until we, in our sole, good faith discretion, decide that we no longer need the Collateral.
2. If you request and we agree in our sole, good faith discretion that Collateral to secure all or a portion of your Obligations will be provided by an entity or entities other than you, and the Collateral is in fact so provided, the entity providing the Collateral acknowledges that it derives direct and substantial benefits from this Agreement, and that we would not provide the Policies or this Agreement without the Collateral. Each entity providing Collateral agrees that it is bound by all of the terms and conditions of this Agreement, including but not limited to the provisions that the Collateral secures all Obligations under this Agreement and under all of the Policies (regardless of the amount of Collateral provided by that entity) and that the duties and



Obligations of that entity and you and your successors and affiliates, divisions and subsidiaries are joint and several.

3. The parties shall in good faith attempt to agree upon each calculation of Collateral. In the absence of mutual agreement as to any such calculation, our calculation of Collateral shall be binding and conclusive for purposes of this Agreement, absent our bad faith or manifest error.
4. If we do not presently require Collateral from you, we reserve the right to require, and you agree to provide, such Collateral within 10 days of our written notice to you that Collateral will be required. If Collateral is required at any time pursuant to this Agreement, you agree to abide by the terms set forth in this Agreement.
5. We may change the Collateral requirements when we determine, in our sole, good faith discretion, any of the following circumstances has occurred:
 - a. We determine that an increase in the Collateral held by us is required; or
 - b. A change in the form of, or an increase in the total amount of, Collateral we hold is required in order to comply with applicable law/regulation or in order for us to obtain a benefit under applicable law/regulation; or
 - c. There is a material change in the financial condition of the issuer of any Letter of Credit or other Collateral, or the financial institution holding any Collateral is no longer acceptable to us.

Within 15 days after we give you written notice of a change in the Collateral requirements, you will deliver such Collateral.

Upon cancellation or non-renewal of your insurance program with us, we may require a Letter of Credit as substitution for any other form of Collateral we hold.

6. You will be in default of this Agreement if you:
 - a. fail to pay any amount to us when due; or
 - b. fail to perform any Obligation or satisfy any requirements under this Agreement or any other Exhibits or Amendments thereto; or
 - c. fail to deliver to us within the time specified or fail to maintain any Collateral required by this Agreement, or fail to deliver or keep available, as Collateral, any Collateral or increase thereof required by this Agreement; or
 - d. become insolvent or unable to pay your debts as they become due or you are declared bankrupt or insolvent, or if a debtor relief proceeding has been brought by or against you; or
 - e. make misrepresentations to us or breach any representations you have made to us, either orally or in writing; or
 - f. fail to sign Integrated Agreements.



7. If you are in default, then we may immediately terminate some or all of your rights to defer payment of your Obligations, as such rights are set forth in this Agreement, and we may also immediately:
 - a. consider due and payable all of your Obligations to us including, but not limited to, those Obligations accruing in the future; and
 - b. satisfy amounts due us by (i) executing immediately, drawing upon or making a claim upon any Collateral we hold, in whole or in part, and applying the proceeds thereof to any amounts due and/or (ii) by holding the proceeds thereof until such time as we, in our sole, good faith discretion, have determined your Obligations to us to be final, and/or we collect from you all amounts that remain outstanding; and
 - c. where permitted by and in compliance with applicable law, (i) terminate your insurance program or any Policy, (ii) terminate any surety bond issued or identified in the applicable Program Exhibit and (iii) cancel or non-renew any certificates of insurance or financial responsibility filings made on your behalf; and
 - d. subject to the terms and conditions of the applicable Policies, cease administering future Plan Losses within the Amounts Retained By You; and
 - e. pursue any and all other legal and equitable rights and remedies available to us under applicable law, including, but not limited to, seeking injunctive relief for your failure to provide us with Collateral, pursuant to the terms of this Agreement.
8. After any default, we may recalculate your Obligations pursuant to the terms of this Agreement and exercise at that time, or at any time thereafter, any of our rights and remedies described in this Agreement until we determine, in our sole, good faith discretion, that your Obligations are final.
9. After default, you agree that we may charge you interest on any of your Obligations that remain outstanding beyond 5 days of our demand. You shall also reimburse us for any and all costs and expenses incurred by us in connection with the collection or enforcement of any of your Obligations to us, including, but not limited to, our attorneys' fees and expenses (including those associated with Arbitration as further set forth in Section 4 of the General Provisions section of this Agreement). Interest shall accrue daily, at the prime rate of interest in effect daily at **J.P. MORGAN CHASE & CO., 270 PARK AVENUE, NEW YORK CITY, NEW YORK 10017-2070**, plus 200 basis points, not to exceed the highest rate allowed by law, from the due date on the bill or invoice until the date we receive payment.
10. After default, any credit or return due to you pursuant to this Agreement will be held by us without interest to you as security for payment of any future Obligations that may develop. Also, we may hold the proceeds of any Collateral we execute, draw or make a claim upon, without interest to you, and we may, from time to time, apply such Collateral proceeds to any of your Obligations. We will return to you any proceeds from any Collateral other than a Letter of Credit or surety bond that we have not applied to Obligations when we, in our sole, good faith discretion, determine that all Obligations finally developed have been paid, or that we no longer need the Collateral. We will return to the issuer any Letters of Credit, surety bonds or



proceeds therefrom we have not applied to Obligations, when we, in our sole, good faith discretion, determine that all Obligations finally developed have been paid, or that we no longer need the Collateral. Pursuant to this Agreement and the Collateral, whichever Travelers company is named in the Collateral as beneficiary pursuant to the requirements of this Agreement has the authority and ability to exercise those rights as an agent for any and all Travelers company(ies).

D. GENERAL PROVISIONS

1. Cancellation of Insurance Policies.

- a. If, pursuant to the conditions of any Policy, such Policy is cancelled by either Party prior to its expiration, the audited exposure base for that Policy shall be calculated by adding the audited exposure base from the beginning of the Policy period to the date of the cancellation and the estimated exposure base for the balance of the original Policy period for the purpose of calculating your Maximum Billed Losses, audited Non-Loss Responsive Premium(s) and/or audited Expense(s). Your Minimum Billed Amount will remain calculated or defined as set forth in the applicable Program Exhibit.
- b. All other Obligations will not be affected by such cancellations.

2. Termination of Agreement. This Agreement shall terminate when we determine, in our sole, good faith discretion that all of your Obligations are final, have been paid and/or otherwise performed, unless we terminate the Agreement earlier pursuant to its terms.

3. Choice of Law, Venue and Jurisdiction. Your insurance program is deemed made in CONNECTICUT, evidences a transaction involving interstate commerce, and shall be governed by the internal laws of CONNECTICUT without regard to its rules regarding conflict of laws. Any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C, Section 1 et seq.) ("FAA") and, to the extent not inconsistent with the FAA, CONNECTICUT arbitration law, and shall take place in CONNECTICUT. The exclusive venue (subject to the applicable rules of the courts concerning the assignment or transfer of cases) for any action to enforce any rights under this Agreement shall lie in the State or Federal Court in HARTFORD County, CONNECTICUT.

4. Agreement to Arbitrate

- a. The Parties will attempt to resolve any dispute arising under this Agreement without resort to formal procedures. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, which cannot be resolved by informal means shall be determined by arbitration before three arbitrators ("Arbitration Panel"), or, in matters where the amount claimed in the claimant's demand for arbitration is less than \$250,000, by one arbitrator. Unless otherwise agreed to by the Parties, the arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and



Procedures, including the Expedited Procedures therein if agreed to by the Parties, or, for matters where claimant's demand is less than \$250,000, the JAMS Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction.

- b. Neither Party shall submit to arbitration (i) any coverage disputes which arise under or in connection with claims or suits brought against the Policies; (ii) claims by or against you and other Travelers policyholders with respect to other insurance programs with us; (iii) claims by or against you and other policyholders of any other commercial lines property casualty insurer(s), including but not limited to any claim under (ii) or (iii) which you purport to arbitrate as a representative or member of a class or as a private attorney general; (iv) any matter seeking to restrict our right to draw upon the Collateral or which would have the effect of restricting our right to draw upon the Collateral; (v) any matter by us pursuant to subsection 7(e) of Collateral and Remedies Section of this Agreement. In addition, in the context in the Workers' Compensation coverage, neither Party shall submit to arbitration any dispute, the resolution of which has been committed to or the resolution of which is within, the exclusive jurisdiction of any state or federal governmental entity.
- c. The arbitrator or Arbitration Panel has no authority, and is not empowered, to consolidate or direct class-action arbitration as to any disputes between the Parties to this Agreement with other disputes between us and any other of our policyholders or other third parties. Nor shall the arbitrator(s) have authority or be empowered to consolidate or direct disputes brought by you as a private attorney general. Any determination by the arbitrator(s) to so consolidate or direct class-action arbitration or to consolidate or direct disputes brought by you as a private attorney general shall be beyond the arbitrator's authority and jurisdiction and shall be void.
- d. The arbitrator or Arbitration Panel shall have authority to award pre-judgment interest, post-judgment interest, interim relief, pre-hearing security, and summary judgment. The arbitrator or Arbitration Panel is not empowered to award punitive or exemplary damages, and the Parties waive any right to recovery of such damages in arbitration.
- e. Each arbitrator shall be a disinterested, active or retired: (i) judge; (ii) executive officer of a property-casualty insurance company admitted or otherwise authorized to transact business in the United States; or (iii) executive officer of a property-casualty broker licensed in the United States. All arbitrators shall serve as neutral, independent and impartial arbitrators.
- f. Within 15 days after the commencement of arbitration, each Party shall select one person to act as arbitrator, and the two so selected shall select a third arbitrator within 30 days of the commencement of the arbitration. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator within the allotted time, the third arbitrator shall be appointed by JAMS in accordance with its rules.
- g. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on its merits, or except as may be necessary in



connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

- h. Each Party shall bear the initial expense of its own arbitrator and shall jointly and equally bear with the other Party all expenses of the umpire and of the arbitration. In arbitrations and related actions required in connection with the collection or enforcement of any of your Obligations to us, the arbitrator(s) may award costs and attorneys' fees reasonably incurred by us in connection with the arbitration as well as interest on those Obligations.

5. **Large Risk Alternative Rating Option; Consent to Rate.** You acknowledge and agree that your Obligations under this Agreement are rated and priced in accordance with the terms of the National Council on Compensation Insurance ("NCCI") Large Risk Alternative Rating Option (Filing Memorandum R-1295), the Travelers large risk filings and any amendments of either, as filed in the applicable state(s). The Parties recognize and acknowledge that you are paying certain rates and charges for your Obligations that may be more or less than the sum of charges that would be part of filed and approved rating plans for the underlying insurance coverages. You acknowledge that you have negotiated and consented to the prices and rates set forth in this Agreement

6. **Audit; Review of Books and Records.** We will audit your records on either a physical or statement basis, at our option and as otherwise required by law, to (i) determine your actual exposure base and (ii) calculate those charges which are subject to audit on the applicable Program Exhibit. We may also conduct periodic review of your financial condition. You will furnish us with such financial information and other books and records as we may reasonably request, including but not limited to certified financial statements.

7. **Conflict with Laws or Regulations/Severability.** Nothing in this Agreement shall be construed to require the commission of any act contrary to law. In the event of a conflict between any provision herein and any applicable law or regulation, the latter shall prevail. But, the provision so affected shall be limited only to the extent necessary to permit compliance with the minimum applicable legal requirement, and all other provisions of this Agreement shall continue in full force and effect. In the event of a conflict between any provision of this Agreement and any provision of any Policy, the Policy shall control.

8. **Failure of Enforcement.** Any failure by us to enforce any provision, exercise any option, or require any performance by you of any of the provisions of the Agreement shall in no way be construed to be a waiver, nor shall such failure in any way affect the validity of this Agreement or any part of it, or our right to thereafter enforce any provision of this Agreement or to exercise any right or remedy available to us under applicable law.



9. **General Representations and Warranties.** You warrant and represent that the person who signs this Agreement has been duly authorized to execute the Agreement for and on behalf of You, and that he or she has the authority to bind you jointly and severally to the terms of this Agreement.

10. **Compliance Warranties.** You represent and warrant that your performance under this Agreement will comply with all applicable federal, state, local, and international laws, regulations and orders of any governmental, judicial or administrative authority including, but not limited to, the following:

a. **Economic Sanctions.** You represent and warrant that you are not, nor are you owned or controlled by, nor do you own or control, a person or entity that is (i) on the list of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or any list of known or suspected terrorists, terrorist organizations or other prohibited persons published by any jurisdiction in which the Insured is doing business, or (ii) subject to economic or trade sanctions imposed by the United States Government, which restrict U.S. companies from engaging in financial or other transactions with such entity for any reason, including but not limited to being resident or headquartered in or a governmental entity of a country subject to such sanctions.

b. **Anti-Bribery and Corrupt Practices Controls.** You represent and warrant that you are familiar with, have complied with, and will comply, in all respects, with laws, regulations, ordinances, and codes regarding anti-bribery, anti-corruption and the offering of unlawful or improper inducements, including but not limited to the U.S. Foreign Corrupt Practices Act, as amended, and other applicable anti-corruption and anti-bribery laws (collectively, the "Corrupt Practices Laws") and will not engage in any transaction that could be deemed bribery. You shall maintain in place throughout the term of this Agreement policies and procedures to prevent corruption and bribery, including adequate procedures as required by applicable laws, and will enforce them where appropriate. You shall immediately notify Travelers in writing of any actual or suspected violation of any Corrupt Practices Laws.

Notwithstanding anything in this Agreement to the contrary, if at any time during the term of this Agreement you breach the terms of this Section 10, then in addition to any other rights Travelers may have under the Agreement, Travelers may immediately terminate the Agreement without any obligation, liability or penalty of any kind.

11. **Hold Harmless.** You may be required to provide evidence of insurance, which may or may not include the amount of any Retention, to interested persons, boards, bureaus, lessors or other organizations. Your agent or broker will provide such evidence of insurance. You agree to indemnify and hold us harmless against any and all claims, settlements, lawsuits, payments, penalties, administrative proceedings, judgments, damages, interest charges, costs or expenses, including reasonable attorneys' fees, resulting from or arising out of or in connection with any errors or omissions related to the issuance of such evidence of insurance. These hold harmless provisions survive termination of this Agreement.



12. **Electronic Signature and Reproductions.** This Agreement and any of its Integrated Agreements or Exhibits may be executed and delivered by electronic signature and transmission, each with the same force and effect as if the same were an original manual counterpart. Both Parties may retain an electronic reproduction (e.g. electronic image, PDF, photocopy of facsimile) of this Agreement, each of which shall be considered an original and shall be admissible in any action arising out of this Agreement.

13. **Assignment.** This Agreement is not assignable by you, without our prior written consent.

14. **Notice.** Any notices or communications required under this Agreement shall be in writing and sent by (i) overnight mail or (ii) electronic mail to the other Party at the address set forth in the Notices section of the most recent Program Exhibit. Such notices shall be deemed delivered when sent.

15. **Acceptance - Entire Agreement.** This Agreement, the Program Exhibit(s) and any other Exhibits referenced in this Agreement or the Program Exhibit(s), and including any Integrated Agreements and any Policies or other documents incorporated herein by reference, constitute the entire, integrated agreement of the parties with respect to the subject matter of this Agreement. This Agreement may not be amended or modified except pursuant to a written agreement executed by authorized officers of both parties.



AGREED TO BY AND BETWEEN:

Orange County

THE TRAVELERS INDEMNITY COMPANY

DocuSigned by:

Bonnie Hammersley

Stephanie Gardner

Name: Bonnie Hammersley
Address: 208 SOUTH CAMERON STREET
HILLSBOROUGH, NC 27278
BHAMMERSLEY@ORANGECOUNTYNC.GOV
DATE:

Address: Travelers, 385 Washington Street
St. Paul, MN 55102
Attn: Stephanie Gardner
Email: SGARDNE2@travelers.com
DATE: 6-30-2022

DocuSigned by:

Gary Donaldson

Name: Gary Donaldson
Address: 208 SOUTH CAMERON STREET
HILLSBOROUGH, NC 27278
GDONALDSON@ORANGECOUNTYNC.GOV
DATE:



PROGRAM EXHIBIT



Your Insurance Program is comprised of your Insurance Policies and any services charged separately. This Program Exhibit outlines how your Obligations to us are calculated and paid.

INSURED: Orange County

PROGRAM TERM: 07/01/2022 TO 07/01/2023

RATING PLAN(S)

Your Rating Plan Obligation(s) is a combination of all of the below plans and amounts:

(1) LOSS RESPONSIVE RATING PLAN(S) (INCLUDING EXPENSES, CLAIM HANDLING CHARGES, PREMIUM TAXES) + (2) NON-LOSS RESPONSIVE RATING PLAN(S) + (3) SURCHARGES AND ASSESSMENTS + (4) SERVICES CHARGED SEPARATELY (IF ANY).

(1) LOSS RESPONSIVE RATING PLAN(S)

Deductible Plan Computation Formula	Deductible Plan Paid Losses + Deductible Plan Claim Handling Charges + Administrative Expense Reimbursement = Deductible Plan Charges
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EXPENSES			
EXPENSE TYPE	RATE (IF APPLICABLE)	MINIMUM AMOUNT	ESTIMATED AMOUNT
Administrative Expense Reimbursement ¹	\$0.1356 Per \$100 of Audited Total WC Payroll Excluding Monopolistic States Payroll	\$74,775	\$74,775
TOTAL EXPENSES INCLUDED IN THE INSTALLMENT SCHEDULE			\$74,775

¹ Administrative Expense Reimbursement is the amount we charge for our annual, non-risk bearing expenses for certain policies, and is in addition to the Claim Handling Charges outlined below. Administrative Expense Reimbursement includes Risk Management Information System (RMIS) Charges, if purchased. If this program is non-renewed, and the parties agree that continued RMIS services will be provided to you, such continued services will be charged on an annual basis at a rate to be negotiated by the parties.

CLAIM HANDLING CHARGES

Workers Compensation and Employers Liability Claim Handling Charges	Basis	Rate
Loss Conversion Factor (LCF)	LCF	.080

The LCF will be multiplied by the first \$250,000 of each Workers Compensation and Employers Liability Loss and Allocated Loss Adjustment Expense associated therewith. The LCF will be applied beginning on the first day of the Program Term for this Program Exhibit and according to the billing basis and billing frequency noted in the Payment Schedule section of this Program Exhibit.

Medical Cost Containment Component of Allocated Loss Adjustment Expense

The Medical Cost Containment Components are charged pursuant to the Allocated Loss Adjustment Expense Exhibit to the Insurance Program Agreement. Allocated Loss Adjustment Expense has the same meaning as "Allocated Loss Adjustment Expense", "ALAE" or "claim expense" in any applicable Policy, or, if the Policy has no such definition, it shall have the same meaning as set forth in the Allocated Loss Adjustment Exhibit.

Savings Expense Fee	Percentage of Savings Achieved	27%
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(2) NON-LOSS RESPONSIVE RATING PLAN

Non-Loss Responsive Premium Formula (other than Guaranteed Cost Policies)	Non-Loss Responsive Rate(s) x Corresponding Exposure Base(s), but in no event less than any stated Minimum Non-Loss Responsive Premium shown in the Non-Loss Responsive Premium section of this Program Exhibit (below).
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NON-LOSS RESPONSIVE PREMIUM

TYPE OF COVERAGE	RATE	MINIMUM AMOUNT	ESTIMATED AMOUNT
Workers Compensation Deductible Premium	\$0.2767 Per \$100 of Audited Total WC Payroll Excluding Monopolistic States Payroll	\$152,583	\$152,583
TOTAL ESTIMATED NON-LOSS RESPONSIVE PREMIUM			\$152,583

Your premium amounts referenced above will include any residual market charges which may be assessed by the various states.

(3) SURCHARGES AND ASSESSMENTS

You will pay Surcharges and Assessments pursuant to individual state law or regulation. Surcharges and Assessments are exclusive of, and in addition to, your Rating Plans

CHARGE TYPE	RATE	DEPOSIT/ESTIMATED AMOUNT
TOTAL CHARGE INCLUDED IN THE INSTALLMENT SCHEDULE		\$0

THE FOLLOWING APPLY TO YOUR PROGRAM: AMOUNTS RETAINED BY YOU, ESTIMATED MAXIMUM AND MINIMUM BILLED AMOUNTS AND ESTIMATED EXPOSURES

AMOUNTS RETAINED BY YOU

Workers Compensation and Employers Liability Loss including ALAE	\$300,000
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Workers Compensation and Employers Liability Losses including Allocated Loss Adjustment Expenses (ALAE) arising out of a single accident shall be limited to the amount indicated above. For Occupational Disease Claims, this limitation shall apply to each employee.

ESTIMATED MAXIMUM AND MINIMUM BILLED AMOUNTS		
Your Loss Responsive Rating Plan is subject to this section. All other rating plans are NOT subject to the Maximum or the Minimum Billed Amount.		
CHARGE TYPE	RATE	AMOUNT
Estimated Maximum Billed Losses	\$2.1444 Per \$100 of Audited Total WC Payroll Excluding Monopolistic States Payroll	\$1,182,500
Your Maximum Billed Losses will not be less than \$1,182,500 Rating Plan Components Subject to Maximum Billed Losses: WC Deductible Plan Losses		
Minimum Billed Amount	\$0.4122 Per \$100 of Audited Total WC Payroll Excluding Monopolistic States Payroll, but in no event less than the sum of the minimum amounts shown in other parts of the Program Summary	\$227,358
Rating Plan Components Subject to Minimum Billed Amount: Administrative Expense Reimbursement Workers Compensation Deductible Premium		

ESTIMATED EXPOSURES APPLICABLE TO OTHER THAN GUARANTEED COST POLICIES		
RATING PLAN	EXPOSURE LOCATION	ESTIMATED EXPOSURE AMOUNT
WC Payroll Deductible Plan States	NC	\$55,143,903
TOTAL WC PAYROLL EXCLUDING MONOPOLISTIC STATES		\$55,143,903

YOU HAVE AGREED TO PROVIDE COLLATERAL AND LOSS FUNDS IN THE AMOUNT AND OF THE TYPE DESCRIBED BELOW, AS FURTHER SET FORTH IN THE COLLATERAL AND REMEDIES SECTION AND THE COLLATERAL EXHIBIT OF THE INSURANCE PROGRAM AGREEMENT.



LOSS FUND REQUIREMENTS			
LOSS FUND TYPE	AMOUNT REQUIRED FOR ALL YEARS (HISTORICAL AND CURRENT)	AMOUNT CURRENTLY HOLDING (HISTORICAL POLICIES)	ADDITIONAL (RETURN) AMOUNT DUE
Deductible Plan Deposit	\$25,000	\$0	\$25,000
TOTAL LOSS FUND DUE (OR RETURN)			\$25,000

COLLATERAL REQUIREMENTS			
COLLATERAL TYPE	AMOUNT REQUIRED FOR ALL YEARS (HISTORIC AND CURRENT)	AMOUNT CURRENTLY HOLDING	ADDITIONAL (RETURN) AMOUNT DUE
Letter Of Credit	\$300,000	\$0	\$300,000
TOTAL	\$300,000	\$0	\$300,000
TOTAL COLLATERAL DUE PER COLLATERAL SCHEDULE			\$300,000

COLLATERAL SCHEDULE		
COLLATERAL TYPE	AMOUNT DUE	DATE
Letter Of Credit		
	\$300,000	07/01/2022
TOTAL COLLATERAL DUE	\$300,000	

INSTALLMENT SCHEDULE		
PAYMENT TYPE	DUE DATE	AMOUNT DUE
Rating Plan Obligations	Payable in 4 equal installments, beginning July 01, 2022 and the 1st day of each succeeding quarter thereafter.	\$227,358

Loss Fund Due with First installment \$25,000

Installment Payments: Remit to Agent/Broker

Plan Loss Payments: Pay Direct to Travelers

Plan Adjustment Payments: Pay Direct to Travelers

It is the agent's or broker's responsibility to comply with any applicable laws regarding disclosure to the policyholder of commission or other compensation We pay, if any, in connection with any Policy or program.



PAYMENT SCHEDULE			
PAYMENT AND VALUATION KEY DATES			
	COMMENCEMENT DATE	BILLING FREQUENCY	BILLING BASIS
Deductible Plan			
Plan Losses	07/01/2022	DB-Monthly Issued	Paid
Claim Handling Charges			
Workers Compensation	07/01/2022	DB-Monthly Issued	Paid
Administrative Expense Reimbursement Adjustment			
Administrative Expense Reimbursement Adjustment	01/01/2024	Once	As per Expenses Section of the Program Exhibit
Non-Loss Responsive Premium(s)			
Non-Loss Responsive Premium(s) Adjustment	01/01/2024	Once	As per Non-Loss Responsive Section of the Program Exhibit

- Paid Basis means the amount of each loss actually paid within your plan layer.

INSURANCE POLICIES				
POLICY NUMBER	TYPE OF COVERAGE	STATES	PLAN TYPE	COMPANY
UB-5T768836-22-PB-D	Workers Compensation and Employers Liability	NC	Deductible	Farmington Casualty Company

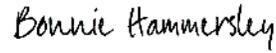
The Company(ies) listed above have an address of One Tower Square, Hartford, CT 06183-7312. The omission of, or failure to include, any Policy in this Program Exhibit shall not relieve you of any of your duties or Obligations under this Agreement or under the Policies.

NOTICES	
<p>Orange County</p> <p>208 SOUTH CAMERON STREET HILLSBOROUGH, NC 27278 Attention: Bonnie Hammersly, County Manager BHAMMERSLEY@ORANGECOUNTYNC.GOV</p>	<p>THE TRAVELERS INDEMNITY COMPANY</p> <p>Travelers, 385 Washington Street St. Paul, MN 55102 Attention: Stephanie Gardner Email: SGARDNE2@travelers.com</p>



AGREED TO BY AND BETWEEN:

Orange County

DocuSigned by:

 208 SOUTH CAMERON DRIVE, 0637994B755E477...
 HILLSBOROUGH, NC 27278
 Attention: Bonnie Hammersley, County Manager
 BHAMMERSLEY@ORANGECOUNTYNC.GOV
 Date:

DocuSigned by:

 208 SOUTH CAMERON DRIVE, 7D4E5181ACC1409...
 HILLSBOROUGH, NC 27278
 Attention: Gary Donaldson, Chief Financial Officer
 GDONALDSON@ORANGECOUNTYNC.GOV
 Date:

THE TRAVELERS INDEMNITY COMPANY



Travelers, 385 Washington Street
 St. Paul, MN 55102
 Attention: Stephanie Gardner
 Email: SGARDNE2@travelers.com
 Date: 6-30-2022



COLLATERAL EXHIBIT



As security for the payment and performance of your Obligations to us, you shall unconditionally pledge and deliver to us and maintain the Collateral in the type and amount set forth in the Collateral Requirements section of the applicable Program Exhibit. In addition to the terms contained elsewhere in the Agreement, you agree to the provisions listed in this Collateral Exhibit concerning the Collateral provided.

LETTER OF CREDIT

The following provisions apply to any Letters of Credit provided under the Agreement.

1. Any Collateral delivered to us and maintained by you under this section shall be clean, irrevocable, unconditional and automatically renewing and in form, content and by issuer satisfactory to us. You acknowledge that any failure by you to provide us with pursuant to our requirement will cause irreparable harm to us.
2. At least sixty (60) days prior to the expiration of any Collateral held by us, you shall deliver to us renewal or replacement Collateral in form, content and by issuer satisfactory to us. The aggregate amount of such renewal or replacement Collateral shall be the same amount as the expiring Collateral, unless we tell you in writing of such other amount as we, in our sole discretion, determine necessary to secure all of your Obligations to us.
3. At any time, we may require changes in the form, content, issuer or amount of any Collateral held by us to secure your Obligations. You shall provide such amended Collateral within 15 days after your receipt of our notice of the need for any such changes.

AGREED TO BY AND BETWEEN:

Orange County

DocuSigned by:

Bonnie Hammersley

Bonnie Hammersley 0637994B755E477...
208 SOUTH CAMERON STREET
HILLSBOROUGH, NC 27278
BHAMMERSLEY@ORANGECOUNTYNC.GOV

DocuSigned by:

Gary Donaldson

Gary Donaldson 7D4E5181ACC1409...
208 SOUTH CAMERON STREET
HILLSBOROUGH, NC 27278
GDONALDSON@ORANGECOUNTYNC.GOV

THE TRAVELERS INDEMNITY COMPANY

Stephanie Gardner

Travelers, 385 Washington Street
St. Paul, MN 55102
Attn: Stephanie Gardner
Email: SGARDNE2@travelers.com

ALLOCATED LOSS ADJUSTMENT EXPENSE EXHIBIT



In addition to the terms contained elsewhere in the Agreement, you agree to the provisions listed in this Allocated Loss Adjustment Exhibit.

1. **Allocated Loss Adjustment Expense ("ALAE")** has the same meaning as "Allocated Loss Adjustment Expense" or "ALAE" or "Defense Expense" or "claim expense" in the applicable Policy or, if the Policy contains no such definition, means the following costs which can be directly allocated to a particular claim:
 - A. Fees of attorneys or other authorized representatives where permitted for legal services, whether by outside or staff representatives.
 - B. Court, Alternate Dispute Resolution and other specific items of expense whether incurred by an outside vendor or by one of our employees, including but not limited to:
 - Medical examinations of a claimant to determine the extent of our liability, degree of permanency or length of disability;
 - Expert medical or other testimony;
 - Autopsy;
 - Witnesses and summonses;
 - Copies of documents such as birth and death certificates and medical treatment records;
 - Arbitration fees;
 - Fees or costs for surveillance or other professional investigations which are conducted as part of the handling of a claim;
 - Fees or costs for Risk Control personnel, rehabilitation nurses or other nurses, if the cost of such nurses is not included in losses, for services which are conducted as part of the handling of a claim;
 - Appeal bond costs and appeal filing fees; and
 - All reasonable expenses incurred by you in the investigation or defense of a claim.
 - C. Medical cost containment expenses incurred with respect to a particular claim, whether by an outside vendor or done internally by an employee for the purpose of controlling losses, to ensure that only reasonable and necessary costs of services are paid. The expenses include but are not limited to:
 - Bill auditing expenses for any medical or vocational services rendered, including hospital bills (inpatient or outpatient), nursing home bills, physician bills, chiropractic bills, medical equipment charges, pharmacy charges, physical therapy bills, medical or vocational rehabilitation vendor bills;
 - Hospital and other treatment utilization reviews, including pre-certification/pre-admission, concurrent or retrospective reviews;
 - Preferred Provider Network/Organization expenses; and
 - Medical fee review panel expenses.
 - D. Expense(s) not defined as losses which are directly related to and directly allocated to the handling of a particular claim and are required to be performed by statute or regulation.
 - E. Supplementary Payments, as defined in those Policies which have a Supplementary Payments provision, except for salaries, overhead and traveling expenses of carrier employees who are not doing activities previously listed as allocated expenses.
 - F. Defense Costs, as defined in those Policies which have a Defense Cost provision, except for salaries, overhead and traveling expense of carrier employees who are not doing activities previously listed as allocated expenses.
 - G. The following shall not be included as "Allocated Loss Adjustment Expense" or "Defense Expense":
 - Salaries, overhead and traveling expenses of carrier employees, except for employees while doing activities previously listed as ALAE;
 - Fees paid to independent claims professionals or attorneys (hired to perform the function of claim investigation normally performed by claim adjusters) for developing and investigating a claim so that a determination can be made

of the cause, extent or responsibility for the injury, disease, or damage, including evaluation and settlement of covered claims; and

- Expenses which are defined as either an indemnity or medical loss.

2. **Medical cost containment expenses** consist of the following components, which apply to Workers Compensation claims with a date of accident beginning with the first date of the Program Term of the applicable Program Exhibit.

A. There is a 27% charge applied to any savings resulting from the following medical bill repricing, pharmacy bill repricing and hospital bill audit activity:

- Application of preferred provider network discounts to physicians' bills, hospital bills and pharmacy bills, including:
 1. Repricing as a result of negotiation of out-of-network physicians' bills, pharmacy bills and hospital bills; and
 2. Repricing of medical bills, pharmacy bills and hospital bills by reviewing the bills and applying state rules/edits and proprietary rules/edits.
- Repricing of medical bills, pharmacy bills and hospital bills by manual bill review by our medical review team

B. Savings realized from medical bill, pharmacy bill and hospital bill review to which the 27% charge is not applied are:

1. Savings realized from the detection and elimination of duplicate bills
2. Savings achieved by the claim case manager, i.e. bills containing unrelated/unauthorized treatment
3. Savings achieved by the medical case manager, i.e. bills containing unapproved medical treatment
4. Savings realized from medical bill repricing, pharmacy bill repricing and hospital bill audit activity achieved by applying any state-mandated schedule
5. Savings realized from the elimination of non-compensable bills.

For purposes of this Exhibit, the term "savings" shall refer to the difference between the amount billed by physician, hospital, pharmacy and other medical providers and the amount ultimately paid. adhere to state-mandated fee schedules and/or usual and customary pricing for certain procedures, may contract with preferred provider networks which have contractual arrangements with certain of those providers to perform certain procedures at pre-determined rates (which may be below fee schedule), and may utilize other fee negotiation resources determine are necessary and appropriate to determine the amount that should pay on any given medical bill.

C. The 27% charge will be capped at \$10,000 per bill and charged to the claim file as an Allocated Loss Adjustment Expense, unless required by state law to charge it to the claim file as a different component of the applicable rating plan. The \$10,000 per bill cap applies to bills with a date of service beginning with the first day of the Program Term set forth in the applicable Program Exhibit.

D. Certain items are still charged separately to the claim file as Allocated Loss Adjustment Expenses. These items include but are not limited to:

1. Utilization Review (pre-certification and concurrent review) services charged on a per activity basis;
2. Independent medical examinations*;
3. Second opinions by a physician*;
4. Chiropractic reviews; and
5. Physician advisor programs.

*unless ordered by an industrial board or state equivalent, in which case it is treated as Medical.



LOSS FUND EXHIBIT



In connection with your Workers Compensation & Employers Liability program, we will make Plan Losses, Allocated Loss Adjustment Expenses and Claims Handling Charges (together referred to as “Loss Transaction” or “Loss Transactions”) on your behalf under your insurance or self-insured program using checks drawn against one of our bank accounts. You acknowledge that these Loss Transactions are Obligations as defined in your Insurance Program Agreement. In exchange for our agreement to pay Loss Transactions on your behalf, you agree to the following:

- You will designate a bank and account (“Source Account”) against which monthly Automated Clearing House (“ACH”) debits will be drawn by us as payment of your Loss Transactions.
- You will provide us with the documentation authorizing Bank of America to make monthly charges and reimbursements at our direction including a signed authorization letter to direct Bank of America to draw ACH debits against your Source Account, along with the Source Account codes and Source Account’s bank ABA Code.
- We will determine the amount due to us by combining the monthly Loss Transaction payments, along with any corrections caused by edits on each Loss payment. This amount will be sent electronically to Bank of America with instructions to draw an ACH debit on your Source Account.

In addition to deposit amount agreed to in the Loss Fund Requirements section of the applicable Program Exhibit, we will periodically perform an analysis of Loss Transactions based upon data from our billing systems to determine the adequacy of the deposit amount. If we, in the exercise of our good faith discretion, determine additional deposits to the Loss Fund Requirements are necessary, this amount will be sent electronically to Bank of America with instructions to draw an ACH debit on your Source Account. Upon request, we will provide you with documentation of the Loss Transactions payment analysis.

Reports identifying Loss(es) and Allocated Loss Adjustment Expense payments must be accessed electronically by you via e-TRACER reporting. These reports identify the Loss Transactions and a premium tax, if applicable for your program with us.

We may automatically continue these payment and billing arrangements if your Insurance program is renewed. If your Insurance program is cancelled or not renewed, we reserve the right to continue or discontinue these payment and billing. If TRACER is discontinued by either of us, your program will change to a monthly billed program, and each month after TRACER is discontinued, we will send you an invoice for the total amount of Loss Transactions due. Upon receipt, you will pay the amount due on or before the date set forth on the invoice.

Standby Letter of Credit Application and Agreement

****If this application is faxed or emailed to a client, include Standby Letter of Credit Application and Agreement Instructions.****

International Operations Use Only

Truist Reference Number

To: Truist Bank

Please issue an irrevocable Letter of Credit substantially in accordance with this application. In issuing the Letter of Credit, Truist Bank is authorized to make such changes from the terms below as Truist Bank, in its sole discretion, may deem advisable provided that such changes shall not vary the principal terms hereof.

Letter of Credit	
Amount in Figures 300,000.00	Amount in Words Three hundred thousand dollars
Partial Drawings <input checked="" type="checkbox"/> Permitted <input type="checkbox"/> Not Permitted	Special Conditions

Applicant (Obligor)			
Legal Entity Name Orange County, North Carolina		Contact Name Gary Donaldson	
Physical Address (No post office boxes allowed.) 405 Meadowlands Drive		City Hillsborough	State NC
Telephone Number 919-245-2453	Fax Number	Email Address gdonaldson@orangecountync.gov	

Co-Applicant/Account Party			
Name to be shown on Letter of Credit <u>if different than Applicant</u> above.		Contact Name	
Physical Address (No post office boxes allowed.)		City	State ZIP Code
Telephone Number	Fax Number	Email Address	

Beneficiary			
Beneficiary Name (In favor of) Travelers Indemnity Company		Attention To (Courier Purposes) Credit Risk Mgt, R Thomas Coffey	Telephone Number 860.954.9531
Physical Address (No post office boxes allowed.) ONE Tower Square, GS05		City Harford	State CT ZIP Code 06183-

Advising/Confirming Bank			
Bank Name	Request Bank To <input type="checkbox"/> Advise <input type="checkbox"/> Confirm	SWIFT Code	
Department/ Contact Name	Telephone Number		
Physical Address (No post office boxes allowed.)	City	State	ZIP Code

Issue Letter of Credit in favor of Advising/Confirming bank requesting the issuance of a guarantee/Performance bond *in favor of the beneficiary stated above* **with an expiry date of 30 days prior to the expiry date of this letter of credit.**

Please indicate the type of local guarantee that is being requested.

Bid Bond Advance Payment Guarantee Performance Guarantee
 Payment Guarantee Warranty Guarantee Other (specify) Letter of Credit

Please have local guarantee issued in accordance with the attached format
 No format provided – request issuance in accordance with local practice

If the locally issued guarantee is to be delivered to a party other than the named beneficiary, please provide the following	
Name	Telephone Number
Address	E-mail Address

Initial Expiration Date One year

If this Letter of Credit is to have an Automatic Extension, complete the information below.

Automatic Extension - The Letter of Credit may be automatically extended for:

One Year or

Other _____

from the present or any future expiration date. The Applicant(s) will pay the applicable **extension processing fee of \$100.00** in addition to commissions as detailed in this application. If the Letter of Credit is not extended, the Bank will provide notice to the Beneficiary at least 90 days prior to expiration. Such extension or termination of the Letter of Credit shall be at the sole discretion of Bank.

Notwithstanding the above, in no event may the Letter of Credit be renewed beyond _____

The Applicant requests Bank to issue its irrevocable Letter of Credit, pursuant to the terms and conditions of this Agreement.

Drawing(s) under this Letter of Credit are available against:

1. Beneficiary's draft(s) drawn at sight on Truist Bank at the address shown in the Letter of Credit unless the Letter of Credit is to be confirmed by a Confirming Bank, in which case the draft will be drawn at sight on the Confirming Bank at the address shown above.
2. Original of the Letter of Credit and any amendments

3.. Issue clean Letter of Credit: We understand that by not instructing Truist Bank to require any documentation that would evidence a default on our part, the presentation of a draft, regardless of any disputes or claims made outside this Standby Letter of Credit constitutes a draw which would obligate us to reimburse Truist Bank.

A certificate purportedly signed by the Beneficiary or a duly authorized officer (or one describing himself therein as such officer) of the Beneficiary stating

Issue Letter of Credit in accordance with the attached document. Applicant must sign the attached document and state the following on the document: "This attachment forms an integral part of our application dated _____ in the amount of **300,000.00**."

4. Other Documents

DESCRIPTION OF THE UNDERLYING TRANSACTION.

This information will not be a part of the Letter of Credit but is required for compliance with government regulations.

Please provide a general description of the transaction to which this letter of credit relates.

To fund Workers Compensation expenses. See sample attached.

Please list the full name and address of any party to this transaction which is not listed elsewhere on this application such as a supplier or end user.

Please list any merchandise associated with this transaction and any countries not mentioned elsewhere in this application

Additional Terms and Conditions

If the Letter of Credit is to be issued pursuant to a Syndicated Credit Agreement, complete the following:

The Applicant(s) requests Bank to issue its irrevocable Letter of Credit pursuant to the terms and conditions of this Agreement and the Syndicated Credit Agreement dated as of _____ among _____ which terms and conditions are subject to this Application by reference thereto, provided, that in event of any conflict between this Application and the Syndicated Credit Agreement, the terms of the Syndicated Credit Agreement shall control. Notwithstanding the terms above, upon termination of the Syndicated Credit Agreement or upon the Bank no longer being a lender under the Syndicated Credit Agreement, the terms of this Agreement will control and be in full force and effect for any Letters of Credit issued pursuant to this Agreement.

In addition to the preceding terms and conditions described in this Application and Agreement ("Agreement"), the Applicant further agrees with Trust Bank ("Trust" or "Bank") as follows:

1. The Bank is authorized to honor drafts presented to it pursuant to the Letter of Credit and in accordance with the terms thereof. It is expressly agreed that the Bank shall honor any draft without requiring additional evidence other than as stated in the Letter of Credit.
 2. The Applicant promises to pay to the Bank, on demand and in immediately available funds at any of its offices, or at such place as the Bank may in writing designate the following amounts (hereinafter "Obligations").
 - (a) The amount of each draft or other request for payment ("draft") drawn under or purporting to be drawn under the Letter of Credit.
 - (b) Applicant further agrees to pay the bank, on demand, its commissions, fees and any and all charges and expenses (including all charges for legal services) which may be paid or incurred by Bank in connection with the Letter of Credit, including but not limited to costs of complying with any and all applicable governmental exchange regulations and all correspondent's charges, for applicant accounts. Any amounts which are not paid when due shall bear interest, payable on demand, until paid in full. Interest payable hereunder shall be at a fluctuating rate, calculated on the basis of 360-day year and actual days elapsed, which is four percent (4%) above the prime rate with each change in the prime rate automatically and immediately changing the rate applicable hereto. For purposes hereof, "prime rate" means the fluctuating rate in effect at the time in question that is publicly announced by you from time to time as being your prime rate hereafter in effect. Such payment shall be subject to a minimum late payment fee. Applicant shall not be entitled a rebate of any portion of the commissions, fee, or in charges paid to Bank if the Letter of Credit shall expire or terminate, or if the amount available under the Letter of Credit shall be reduced prior to the end of the period for which such commissions, fee, or charges are paid.
 - (c) All expenses which the Bank may pay or incur in connection with issuing, confirming or advising the Letter of Credit, including but not limited to Telex/Swift transmissions fee, overnight domestic courier fee, foreign courier fee and faxing fee, any fees charged to the Bank by any other third parties in connection with the issuance, advise/confirmation, negotiation, amendment or collection of the Letter of Credit, any stamp taxes, recording taxes or similar taxes or fees payable in connection with the Letter of Credit or this Agreement, and reasonable attorney's fees and disbursements and other dispute resolution expenses to protect or enforce the Bank's rights and remedies under or in connection with the Letter of Credit, this Agreement or other related documents including to respond to any notice of fraud, forgery, illegality, presentation under the Letter of Credit, or to defend against any action in which an injunction is sought or obtained.
 - (d) Upon issuance of the Letter of Credit, the Applicant agrees to pay the Issuance Processing Fee described below. In addition, and as long as the Bank is obligated under the Letter of Credit, the Applicant agrees to pay the commission described below, and in the absence of such description, in such amounts and at such commission rates as the Bank may in its discretion reasonably determine. In addition, the Applicant agrees to pay the following items as applicable (i) a late charge equal to 5% of any amount more than 15 days past due; and (ii) a reasonable amendment fee for processing any amendment or extension to the Letter of Credit.
 - (e) As to drafts which are payable in currency other than United States currency, the amount to be paid by Applicant will be the amount required to purchase the currency from Bank at Bank's current selling rate for cable transfers to the place of payment in the currency and amount in which such draft was drawn. If there is then no current selling rate generally offered by Bank for effecting such cable transfers, Applicant agrees on demand to pay Bank an amount, which Bank then deems necessary to pay or provide for the payment of Applicant's Obligations hereunder.

By prior arrangement satisfactory to Bank, as to any draft payable in currency other than United States currency, Applicant may pay to Bank the amount of such draft by making such amount immediately available to Bank by the deposit of such amount (in the currency in which such draft is payable) to an account maintained by Bank at a financial institution to be specified by Bank under advice to the Bank.

Notwithstanding the manner of payment or the currency in which any draft is drawn, Applicant shall remain liable for any deficiency which may result if the actual cost to Bank or settlement of Bank's obligation under the Letter of Credit proves to be in excess of the amount so paid by Applicant and Applicant shall be entitled to a refund, without interest, of any excess payment made to Bank.
 - (f) Applicant authorizes Bank to debit any of Applicant's accounts at Bank for any payments due under this Agreement, Applicant further certifies that it holds legitimate ownership of each of these accounts and preauthorizes this debit as part of its ownership rights.
3. Claims against Bank; Waivers; Exculpations; Limitations of Liability; Ratification; Accounting. (A) Applicant's Obligations shall be irrevocable and unconditional and performed strictly in accordance with the terms of this Agreement, irrespective of: (i) any change or waiver in the time, manner or place of payment or of any other term of the Obligations (including any release) of any other party who, if applicable, has guaranteed or is jointly and severally liable for any of the Obligations or granted any security interest therefore; (ii) any exchange, change or release of any Collateral or other collateral (including any failure of Bank to perfect any security interest therein), for any of the Obligations, (iii) any presentation under the Letter of Credit being forged, fraudulent or any statement therein being untrue or inaccurate, (iv) any agreement by Bank and any Beneficiary extending or shortening Bank's time after presentation to examine documents or to honor or give notice of discrepancies. (B) Without limiting the foregoing, it is expressly agreed that the obligations of Applicant to reimburse or to pay Bank pursuant to this Agreement will not be excused by ordinary negligence, gross negligence, wrongful conduct or willful misconduct of Bank. However, the foregoing shall not excuse Bank from liability to Applicant in any independent action or proceeding brought by Applicant against Bank following such reimbursement or payment by Applicant to the extent of any unavoidable direct damages suffered by Applicant that are caused directly by Bank's gross negligence or willful misconduct is found in a final, non-appealable judgment by a court of competent jurisdiction; provided that (i) Bank shall be deemed to have acted with due diligence and reasonable care if it acts in accordance with standard Letter of Credit practice of commercial banks located in the place that the Letter of Credit is

issued; and (ii) Applicant's aggregate remedies against Bank for wrongfully honoring a presentation or wrongfully retaining honored documents shall in no event exceed the aggregate amount paid by Applicant to Bank with respect to the honored presentation, plus interest. (C) Without limiting any other provision of the Agreement, Bank and, as applicable, its correspondents: (i) may rely upon any oral, telephonic, telegraphic, facsimile, electronic, written or other communication believed in good faith to have been authorized by Applicant, whether or not given or signed by an authorized person; (ii) shall not be responsible for any acts or omissions by, or the solvency of, any Beneficiary, any nominated person or any other person; (iii) may honor any presentation or drawing under the Letter of Credit that appears on its face substantially to comply with the terms and conditions of the Letter of Credit; (iv) may honor or reimburse the issuing bank for any presentation under any Guarantee, requested pursuant to this Agreement, that appears on its face to substantially comply with the terms and conditions of such requested Guarantee and may honor or reimburse the issuing bank for a demand for payment under a demand Guarantee or any counter guarantee (which includes but is not limited to a letter of credit) that is issued subject to the Uniform Rules for Demand Guarantees, 2010 Revision, International Chamber of Commerce Publication No 758 ("URDG") including but not limited to: (1) in the case of a demand guarantee other than a counter-guarantee, such demand for payment is not supported by a statement indicating in what respect the Bank or other applicant named in such Guarantee is in breach of its obligations under any underlying agreement or transaction, unless the demand guarantee expressly requires presentation of such supporting statement and regardless of whether such demand guarantee expressly excludes any requirement for such a supporting statement or (2) in the case of a counter-guarantee, such demand is not supported by a statement by the party to whom such counter-guarantee was issued indicating that such party has received a complying demand under the demand guarantee or counter-guarantee issued by such party, unless the counter-guarantee expressly requires presentation of such supporting statement and regardless of whether the related counter-guarantee expressly excludes the requirement for such a supporting statement, (v) may permit partial drawings under the Letter of Credit, except as otherwise expressly stated in the Letter of Credit, and may honor the relative Drafts without inquiry (vi) may disregard any requirement of the Letter of Credit that presentation be made to it at a particular place or by a particular time of day (but not any requirement for presentation by a particular day) or that notice of dishonor be given in a particular manner, and Bank may amend or specify any such requirement in the Letter of Credits; (vii) may accept as a draft any written or electronic demand or request for payment under the Letter of Credit, even if nonnegotiable or not in the form of a draft, and may disregard any requirement that such draft, demand or request bear any or adequate reference to the Letter of Credit; (viii) may honor, before or after its expiration, a previously dishonored presentation under the Letter of Credit, whether pursuant to court order, to settle or compromise any claim that is wrongfully dishonored or otherwise, and shall be entitled to reimbursement to the same extent (if any) as if it had initially honored plus reimbursement of any interest paid by it; (ix) may honor, upon receipt, any drawing that is payable upon presentation of a statement advising negotiation or payment (even if such statement indicates that a draft or other document is being separately delivered) and shall not be liable for any failure of any Draft or document to arrive or to conform with the Draft or document referred to in the statement or any underlying transaction; (x) may retain proceeds of the Letter of Credit based on a valid exercise of Bank's set off rights or an apparently applicable attachment order or blocking regulation; (xi) may select any branch or affiliate of Bank or any other bank to act as advising, transferring, confirming and/or nominated bank under the law and practice of the place where it is located; (xii) shall not be responsible for any other action or inaction taken or suffered by Bank or its correspondents under or in connection with the Letter of Credit, with any presentation thereunder or with any Collateral, if required or permitted under any applicable domestic or foreign law or Letter of Credit practice. Examples of laws or practice that may be applicable, depending upon the terms of the Letter of Credit and where and when it is issued, include the UCC, the Uniform Rules for Demand Guarantees ("URDG") the UCP, the ISP, published rules of practice, applicable standard practice of banks that regularly issue Letters of Credit, and published statements or interpretations on matters of standard bank practice. (D) Neither Bank nor any of its correspondents shall be liable in contract, tort, or otherwise, for any punitive, exemplary, consequential, indirect or special damages. Any claim by Applicant under or in connection with this Agreement or the Letter of Credit shall be reduced by an amount equal to the sum of (i) the amount (if any) saved by Applicant as a result of the breach or other wrongful conduct complained of; and (ii) the amount (if any) of the loss that would have been avoided had Applicant taken all reasonable steps to mitigate any loss, including by enforcing its rights in the transaction(s) underlying the Letter of Credit, and in case of a claim of wrongful dishonor, by specifically and timely authorizing Bank to effect a cure.

4. As security for the performance of all present or future Obligations of every kind and description, however evidenced, of the Applicant, whether such Obligations are direct or indirect, fixed or contingent, liquidated or unliquidated, including any extensions, amendments, modifications or renewals thereof the Applicant hereby grants the Bank a security interest in and the right of possession and disposal of the following collateral ("Collateral"):

- (a) Bank shall be subrogated to the Applicant's rights in respect of any transaction in any way related to the Letter of Credit or any Drafts, including rights against Beneficiary, any collateral, all of the Applicant's rights and causes of action against any and all parties arising from or in connection with any contract of sale or purchase of property covered by the Letter of Credit or any other transaction involving the Letter of Credit, or any guarantees, agreements or other undertakings (including those in effect between the Applicant and any Account Party named in the Letter of Credit), Letters of Credit, policies of insurance or other assurances in connection therewith; and
- (b) To the extent permitted by applicable law, all tangible and intangible property, rights, claims and demands of every kind (including deposit balances) now or hereafter belonging to the Applicant and which may now or hereafter be in the possession, custody or control of, or in transit to, or set apart for the Bank or its Agents for any purpose; and
- (c) The following specifically described collateral, *if applicable*:

None

The terms and covenants of the security instrument(s) covering such collateral are hereby made a part of this Agreement and incorporated herein by this reference. The above described property shall be held by Bank as collateral for: (a) any and all Obligations and liabilities of Applicant to Bank hereunder, and (b) any and all other Obligations and liabilities of Applicant to Bank, whether now existing or hereinafter arising, due or to become due, whether individually or jointly with others, and whether direct, indirect, absolute or contingent as maker, endorser, guarantor, surety or otherwise.

5. **Each Applicant warrants and represents to Bank that it has all requisite power and authority to conduct its business, to own its properties and to execute and deliver and perform all its Obligations under this Application.**

- (a) The execution and delivery by each Applicant of, and the performance by each Applicant of its Obligations hereunder have been duly authorized by all requisite action on the part of each Applicant, and do not and will not (i) violate any provision of any law, rule or regulation, or any order, writ, judgment, injunction, or ruling of any court or governmental agency, or (ii) be in conflict with, result in a breach of, or constitute, with notice or lapse of time or both, a default under any indenture, agreement or other instrument to which each Applicant is a party or by which each Applicant or any of its property is bound or under its organizational documents.
- (b) The Application, when executed and delivered to the Bank, will be the legal, valid and binding agreement of each Applicant, enforceable against Applicant in accordance with its terms.

6. Upon the occurrence of any of the following events of default (hereinafter "Event of Default"), the Bank, at its option, may declare the amount of the Letter of Credit and any or all of the other Obligations of the Applicant to the Bank immediately due and payable and the Bank may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code and other applicable law and all rights provided herein, all of which rights and remedies shall, to the full extent permitted by law, be cumulative:
- (a) The Applicant fails to pay when due any Obligation or is otherwise in default under this Agreement or any other agreement;
 - (b) The falsity or the appearance of falsity made by the Applicant in this Agreement or in connection with this Agreement or any other agreement with the Bank;
 - (c) The failure of the Applicant to observe or perform any of the terms or provisions of this Agreement, or any such default by any guarantor of this Agreement;
 - (d) The breach of any of the Applicant's representations or warranties in this Agreement or any other agreement with the Bank;
 - (e) Applicant grants a security interest in or a lien on any of its assets to any person without granting the Bank a security interest in or lien on the same assets on a *pari passu* basis.
 - (f) The death, dissolution, merger, consolidation or termination of existence of the Applicant or any guarantor;
 - (g) The insolvency or inability to pay debts as they mature of the Applicant or any guarantor, or the application for the appointment of a receiver for any of them, or the filing of a petition under any provision of the Bankruptcy Code or other insolvency law or statute by or against any of them, or any assignment for the benefit of Creditors by or against any of them;
 - (h) The entry of a judgment against the Applicant or any guarantor or the issuance or service of any attachment, levy or garnishment against the Applicant or any guarantor or the repossession or seizure of property of any of them.
 - (i) Any deterioration or impairment of the Collateral or any part of the Collateral or any decline or depreciation in the value or market value of the Collateral (whether actual or reasonably anticipated), which causes the Collateral, in the judgment of the Bank, to become unsatisfactory as to character or value;
 - (j) A material change in the ownership, control or management of the Applicant or any guarantor unless such change is approved by the Bank or the sale or transfer by any Applicant or any guarantor of all or substantially all of such party's assets other than in the ordinary course of business;
 - (k) As permitted by applicable law, a determination by the Bank a material adverse change in the financial condition, business results, assets, or liabilities of the Applicant or any guarantor has occurred since the date of this Agreement; or
 - (l) Applicant shall fail to pay any principal, premium, interest or if any event shall occur or any condition shall exist in respect of any indebtedness, including but not limited to (*any Credit agreement outstanding with Truist, if any*) owed by Applicant the effect of which is to cause (or permit the holder or owner of such indebtedness to cause) such indebtedness or any portion thereof, to become due prior to its stated maturity or prior to its regularly scheduled dates of payment.

The Bank shall have no obligation or commitment to issue, extend, or amend or renew any Letter of Credit if an Event of Default has occurred and is continuing. On the date of any issuance, extension, renewal or amendment of any Letter of Credit, Applicant represents and warrants that (l) no Event of Default exists or would result from the issuance hereof and (ii) that all the representations and warranties herein are true and correct on and as of such date.

7. The Applicant shall comply with all foreign and US Laws, rules and regulations now or hereafter applicable to the execution, delivery and performance by the Applicant of this Agreement or to the transactions related to the Letter of Credit.
8. Applicant will indemnify and hold harmless Bank and its officers, directors, affiliates, employees, attorneys and agents (each, an "Indemnified Party") from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and disbursements and other dispute resolution expenses (including fees and expenses in preparation for a defense of any investigation, litigation or proceeding) and costs of collection) that arise out of or in connection with: (A) the Letter of Credit or any pre-advice of its issuance; (B) any payment or action taken or omitted to be taken in connection with the Letter of Credit or this Agreement (including any action or proceeding to (i) restrain any presentation, (ii) compel or restrain any payment or the taking of any other action under the Letter of Credit, (iii) obtain damages for wrongful dishonor or honor of the Letter of Credit or for breach of any other duty arising out of or related to the Letter of Credit, (iv) compel or restrain the taking of any action under this Agreement or (v) obtain similar relief (including by way of interpleader, declaratory judgment, attachment or otherwise), regardless of who the prevailing party is in any such action or proceeding); (C) an adviser or a confirmer or other nominated person seeking to be reimbursed, indemnified or compensated, (D) any beneficiary requested to issue its own undertaking seeking to be reimbursed, indemnified or compensated or (E) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds, this Agreement, the Collateral or the Letter of Credit; (G) the release by Applicant of any Letter of Credit to any third party prior to its issuance by the Bank; or (H) any act or omission, whether rightful or wrongful, of any present or future *de jure* or *de facto* government or governmental authority (including with respect to any document or property received under this Agreement or the Letter of Credit) or any other cause beyond the Bank's control, except to the extent such liability, loss, damage, cost or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly from such Indemnified party's gross negligence or willful misconduct. Applicant will pay on demand from time to time all amounts owing under this section. If and to the extent that the Obligations of Applicant under this section are unenforceable for any reason, Applicant agrees to make the maximum contribution to the payment of such obligation that is permissible under applicable law.
9. Applicant is responsible for approving the text of the Letter of Credit as issued by Bank and as received by any Beneficiary. Applicant's ultimate responsibility for the final text shall not be affected by any assistance Bank may provide such as drafting or recommending text or by Bank's use or refusal to use text submitted by Applicant. Bank does not represent or warrant that the Letter of Credit will satisfy Applicant's requirements or intentions. Applicant is responsible for the suitability of the Letter of Credit for Applicant's purposes. Applicant will examine the copy of the Letter of Credit, and any other documents sent by Bank in connection with the Letter of Credit, and shall notify Bank of any non-compliance with Applicant's instructions, and of any discrepancy in any document under any presentment or other irregularity, within 3 business days after Applicant receives or should have received any of such documents (the "Required Time"); provided, however, if the end of the Required Time falls on a weekend or Bank holiday, the deadline shall be extended to the end of the next business day. Applicant's failure to give timely and specific notice during the Required Time shall automatically waive Applicant's right to object, and will be deemed to have authorized or ratified Bank's action or inaction, and preclude Applicant from raising any objection as a defense or claim against Bank.

10. Upon the occurrence and during the continuation of any Event of Default or in the event of fees imposed upon the Bank by other parties in connection with the issuance, amendment, maintenance or collection of the Letter of Credit, the Applicant agrees that the Bank may, to the extent permitted by applicable law, set off against the balance due under this Agreement any and all Letter of Credits, money, stocks, bonds or other security or property of any nature whatsoever on deposit with, held by or in the possession of the Bank or its Agents to the Letter of Credit of or for the Applicant's account, without prior notice to or consent by the Applicant, but the Bank shall provide prompt written notice to the Applicant of such set off. The Bank's rights under this paragraph are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the Bank may have.
11. The Applicant agrees to execute and deliver to the Bank any other documents and instruments the Bank may from time to time reasonably require in connection with the Letter of Credit in form satisfactory to the Bank, and will join the Bank in executing financing statements or other documents and pay the cost of filing the same, including all recordation, transfer and other taxes or fees.
12. Should the Bank, after the date hereof, determine that the adoption of any law or regulation regarding capital adequacy, or any change in the interpretation or administration thereof, has or would have the effect of reducing the Bank's rate of return under this Agreement or under the Letter of Credit to a level below that which the Bank could have achieved but for such adoption or change, by an amount which the Bank considers to be material, then, from time to time, 30 days after written demand by Bank, the Applicant shall pay to the Bank such additional amounts as will compensate the Bank for such reduction. Each demand by the Bank shall be made in good faith and shall be accompanied by a certificate claiming compensation under this paragraph and stating the amounts to be paid to it hereunder and the basis therefore.
13. In the event of any change, modification or amendment to the Letter of Credit, this Agreement shall be binding upon the Applicant with regard to the Letter of Credit as so changed, modified or amended and to any action taken by the Bank or any of its Agents in accordance with such change, modification or amendment, expressly including but not limited to, a change of the Beneficiary's name, change of the Beneficiary's address or any reduction in the amount of the Letter of Credit.
14. The terms and conditions of this Agreement may not be waived or amended except with the written consent of the Bank. The Bank may waive any default or remedy any default without waiving the default remedied or any other prior or subsequent default. The Bank's failure to exercise any right or take any action under this Agreement shall not constitute a waiver of that or any other right or action. The Bank is expressly authorized to make such minor changes in the terms set forth herein as it, in its sole discretion, deems necessary to issue the Letter of Credit provided that no such changes shall vary the principal terms hereof.
15. (A) Co-Applicants. If the Agreement is signed by two or more Applicants, it shall be the joint and several obligation of each. Each named Account Party shall be an Applicant for purposes of this Application and is subject to the terms, conditions and liabilities set forth herein. Bank at its discretion may accept, or seek instruction, from any Applicant or Co-Applicant regarding a Letter of Credit, including, without limitation, any amendment thereto or waiver of any discrepancy there under, and until the Bank receives written notice of revocation of such authority regarding one of the parties at the Standby Letter of Credit Department, each Applicant and Co-Applicant shall be bound by and hereby affirms the instructions of the other.

 (B) Financial Institution as Customer. If the Agreement is signed as Applicant or Co-Applicant by bank, trust company, or other financial institution for its customer, such Applicant appoints Bank as its agent to issue the Letter of Credit. Such Applicant and its customer agree to act in accordance with and be subject to the Agreement. If such Applicant is required (i) to reimburse Bank; (ii) to pay the Bank in the Event of Default; (iii) to indemnify Bank' (iv) to provide collateral, then its customer agrees to reimburse, pay or indemnify Applicant for the full amount of those payments and to provide the requisite collateral. In addition, the Financial Institution agrees to obtain its customer's consent before agreeing to waive any discrepancy in the documents related to the Letter of Credit or waive or amend any terms of the Agreement or the Letter of Credit.
16. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
17. This Agreement shall become effective upon its receipt by the Bank provided that the Bank shall not be obligated to issue the Letter of Credit until this Agreement is accepted by the Bank's authorized officer.
18. This Agreement shall be binding upon the Applicant, its successors and assigns, and shall inure to the benefit of the Bank, its successors, transferees and assigns.
19. If any consideration transferred to Bank in payment of, or as collateral for, or in satisfaction of the Obligations, shall be voided in whole or in part as a result of (A) a subsequent bankruptcy or insolvency proceeding; (B) any forfeiture or in rem seizure action or remedy; (C) any fraudulent transfer or preference action or remedy; or (D) any other criminal or equitable proceeding or remedy, then Bank may at its option recover the Obligations or the consideration so voided from Applicant. In such event, Bank's claim to recover the voided consideration shall be a new and independent claim arising under this Agreement, and shall be jointly and severally due and payable immediately by Applicant.
20. Unless specifically committed to do so in a writing signed by the Bank, the Bank need not consent to any Letter of Credit amendment. If the Letter of Credit may be extended or terminated by a notice given or other action taken by the Bank (with or without the passage of time), then, whether or not requested to do so by the Applicant, the Bank shall have the right to give such notice or take such action, to fail or refuse to do so, or fail to retain proof of doing so. If the Bank gives such notice or takes such action at the Applicant's request, then the Applicant shall obtain the beneficiary's acknowledgment thereof and, in the case of Letter of Credit termination, return of the original Letter of Credit. If the Bank fails or refuses to give a notice of non-extension or termination at the Applicant's timely written request, then the Bank's Letter of Credit fees shall be calculated as if the Bank had given such notice or taken such action.
21. Bank may grant participations, without the consent of the Applicant, or may issue a Guarantee, at the request of the Applicant, in favor of beneficiary provided that the Applicant acknowledges and agrees that information pertaining to the Applicant as it relates to this Agreement, Participation or request for a Guarantee may be disclosed to the actual or prospective participants, issuers, transferees or assignees. Bank is authorized without the consent of the Applicant or Account Party to disclose information about this transaction to third parties including, but not limited to proposed or actual purchasers of a participation in the transaction and parties acting or proposed as issuers, transferees or assignees

22. The Applicant(s), individually and/or by the signature(s) of its authorized representative below, hereby certifies that: the foregoing has been carefully read by the Applicant and is given to Bank for the purpose of obtaining the credit described above and other credit from time to time in whatever form; the information in this Application and any other documents or information submitted in connection with this Application or any other credit request are true and correct statements of the Applicant's financial condition and may be treated by the Bank as a continuing statement thereof until replaced by a new Application or until the Applicant specifically notifies the Bank in writing of any change; and the credit requested herein and any other credit obtained from the Bank by the Applicant on the basis of the information contained in this Application shall be used solely for business and commercial purposes. The Applicant authorizes the Bank and shall cause any Guarantors to authorize the Bank to: verify at any time any information submitted to the Bank by or on behalf of the Applicant and/or any Guarantor; obtain further information concerning the credit standing of the Applicant, its representatives and Guarantors; and exchange such credit information with others. The Applicant agrees to provide additional information, financial or otherwise, upon request.
23. The International Standby Practices (ISP98) or the Uniform Customs and Practices for Documentary Credits (UCP), other agreed upon rules of practice or such later revisions reflecting generally accepted practice, custom and usage of Letters of Credit as stated in the text of the actual Letter of Credit shall in all respects be deemed a part of this Agreement as fully as if incorporated herein and shall apply to the Letter of Credit. The Applicant agrees that certain material events and occurrences relating to the Letter of Credit and this Agreement bear a reasonable relationship to the laws of Georgia. The laws of such jurisdiction and the federal law of the United States shall govern the construction of this Agreement and the rights and duties of the parties, except to the extent such laws are inconsistent or in variance with the ISP98, UCP or other rules stated in the Letter of Credit, as applicable, then to the extent permitted by law, the UCP or the ISP98 or other rules stated in the Letter of Credit, as applicable, shall govern or be read to explain the applicable law. The ISP98, UCP or other rules stated in the Letter of Credit shall serve, in the absence of proof to the contrary, as evidence of standard practice with respect to the subject matter hereof.
24. IN ANY PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER, APPLICANT IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN ANY COUNTY IN THE STATE OF GEORGIA AND AGREES NOT TO RAISE ANY OBJECTION TO THE JURISDICTION OR TO THE LAYING OR MAINTAINING OF THE VENUE OF ANY SUCH PROCEEDING IN THE JURISDICTION.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, APPLICANT AND BANK HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LETTER OF CREDIT AND ANY OTHER DOCUMENT OR INSTRUMENT RELATED THERETO.

Commissions

If the commission rate is not completed, the commission will be charged at 3% or minimum \$1,000.00, whichever is greater.

1. Issuance Processing Fee: \$ **250.00** plus the commission in number two (2) below
2. The commission payable on the Letter of credit will be **0.50 %** . If the commission rate calculates to less than \$1,000, the minimum charge of \$1,000.00 will apply. Commissions based on percentage are calculated on an actual/360 basis, that is, actual number of days elapsed over a year of 360 days. The commission is subject to change. Initial commission and issuance processing fees are due and payable at time of issuance.

Applicant Account Number **6167** will automatically be debited for fees and charges, unless otherwise indicated on approval documentation.

3. If this Letter of Credit has an automatic extension clause an Extension Fee of \$100 will be charged in addition to the Commission above for each extended period.

Bills and/or debit advices will be sent to Account Party unless otherwise specified below			
Company Name Orange County, North Carolina	Attention To Gary Donaldson		
Physical Street Address 405 Meadowlands Drive, PO Box 8181	City Hillsborough	State NC	ZIP Code 27278-
Telephone Number 919-245-2453	Fax Number		

Special Instructions
See sample LC attached.

Applicant (Obligor)

Orange County, North Carolina

Entity or Individual's Name

Local Government

Type of Organization

North Carolina

State of Organization

Signature

Gary Donaldson

Printed Name

Chief Financial Officer

Title

Date

Affix Corporate Seal if applicable.

Co-Applicant/ Account Party

Entity or Individual's Name

Type of Organization

State of Organization

Signature

Printed Name

Title

Date

Affix Corporate Seal if applicable.

After you have completed the application, sign and forward along with all applicable attachments to your Relationship Manager at Truist Bank.

Bank Use Only – This section must be completed by the Relationship Manager (RM).

Please specify where this letter of credit was approved then complete the appropriate section below:

- WLS Production Center (complete first section)
- In the region (complete second section)
- In Special Assets Department (next two sections do not apply)

For Letters of Credit approved by a WLS Production Center

Work Package Number ACAPS ID # _____ or nCino Work Package # _____ and Request # _____
 Type of approval: Guidance Line for multiple LCs or Approval for Single LC only
 Certificate of Deposit # _____
 Amount _____ Date Issued _____

Note: For Private Wealth clients, the requirement for a CD may be waived by the credit approver. If the requirement for a CD has been waived by the WLS Production Center Credit Approver, please check here

This letter of credit: Has an auto-extension clause (evergreen) Yes No
 Is for Insurance Purposes Yes No

If either answer is Yes, then the CD must be auto-renew.

For Letters of Credit approved by the region (including overridden from WLS Production Center):

Work Package Number ACAPS ID # _____ or nCino Work Package # _____ and Request # _____
 Type of approval: Guidance Line for multiple LCs or Approval for Single LC only
 This letter of credit: Has an auto-extension clause (evergreen) Yes No
 Is for Insurance Purposes Yes No

If yes is checked on either, please complete the following section

Is this LC being issued under a sublimit of a committed line of credit? Yes No
 Is this LC secured by properly margined and monitored liquid collateral? Yes No

If the answer to both of these is No, the following certification must be completed and signed.

An exception to the collateral requirements in CML2131 has been approved and cited as TPE #18 in the credit approval package.

 (Signature)

Region or Line of Business Senior Credit Officer or Designee _____
 (Print name)

CIB Risk Manager or Designee _____
 (Print name)

NOTE: Letters of Credit issued for Consumer Purposes are prohibited by bank policy.

This Letter of Credit application, the customer, amount, auto renewal terms, and expiration date of which are referenced herein, is approved for issuance. I certify that I have appropriate lending authority and/or have obtained the same. I also certify that the pricing on this letter of credit is in accordance with the standards of my Line of Business.

RM Name	RM Signature	Date	
Officer Number	Center Number	Telephone Number	Fax Number
Customer Name		DDA Account Number	
COMPASS Obligor Number	COMPASS Obligation Number		
	<input type="checkbox"/> Financial Standby (69x) <input type="checkbox"/> Performance Standby (68x)		
Special Instructions			

- E-mail to LettersOfCredit@Truist.com
- Send original to Truist Bank
 Attn: Standby Letter of Credit
 7701 Airport Center Drive, STE 2100
 MAIL CODE 527-99-02-85
 Greensboro, NC 27409
- Applications received after 2:30 p.m. EST, will be considered as received the following day.
- For questions, call Client Services at 800-951-7847, option 1.

To avoid duplication of issuance, enter date form was originally faxed to International Operations.

**FOR INTERNAL IDENTIFICATION
PURPOSES ONLY**

Applicant _____

IRREVOCABLE LETTER OF CREDIT NO. _____

TO: The Travelers Indemnity Company (Beneficiary)
Credit Risk Management
Attn: R. Thomas Coffey
One Tower Square, GS05
Hartford, CT 06183

We hereby establish this clean irrevocable Letter of Credit in favor of the aforesaid addressee (“Beneficiary”) for drawings up to United States \$300,000.00 effective immediately. This Letter of Credit is issued, presentable and payable at our office at (issuing bank’s address) and expires with our close of business on _____, 20____. After the Letter of Credit has been issued, it cannot be revoked or reduced without the consent of the Beneficiary.

The term “Beneficiary” includes any successor by operation of law of the named Beneficiary including, without limitation, any liquidator, rehabilitator, receiver or conservator.

We hereby undertake to promptly honor your sight draft(s) drawn on us, indicating our Credit No. _____, for all or any part of this Credit if presented at our office specified in paragraph one on or before the expiry date or any automatically extended expiry date. If you so choose, you will be able to draw on this Letter of Credit more than once, so long as the sum of the amounts which you have drawn does not exceed the full amount of the Letter of Credit. Any charges due and owing to the issuing bank from the account party or any other person or to the account party or any other person from the issuing bank may not be collected or deducted from the proceeds of the Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any note, document, instrument or agreement referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates and any such reference shall not be deemed to be incorporated herein by reference. The obligation of (issuing bank) under this Letter of Credit is the individual obligation of (issuing bank), and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiry date hereof, or any future expiration date, unless 90 days prior to any expiration date we notify you by registered mail, or overnight courier that we elect not to consider this Letter of Credit renewed for any such additional period. In that event, you may draw hereunder on or prior to the then relevant expiration date, up to the

full amount then available hereunder, against your sight draft(s) on us, bearing the number of this Letter of Credit.

This Letter of Credit is subject to and governed by the Laws of the State of Connecticut and the International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98) and, in the event of any conflict, the Laws of the State of Connecticut will control.

Very truly yours,

(Issuing Bank)