

## ARPA SUBRECIPIENT AGREEMENT

This ARPA Subrecipient Agreement (“Agreement”) is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Norman, Oklahoma, a municipal corporation (“City”), and the Norman Economic Development Coalition, a not-for-profit Oklahoma corporation (“Subrecipient”).

WHEREAS, the U.S. Department of Treasury (“Treasury”) has allocated to the City \$22,245,542 of federal stimulus money from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Funds under CFDA No. 21.027 (“ARPA Funds”) under Section 803(b) of the Social Security Act, as amended by Section 9901 of the American Rescue Plan Act (“ARPA”), for the limited purposes identified in the Coronavirus State and Local Fiscal Recovery Funds Final Rule (“Final Rule”) effective April 1, 2022, and the Compliance and Reporting Guidelines for State and Local Fiscal Recovery Funds (“Compliance and Reporting Guidelines”) dated February 28, 2022; and

WHEREAS, the ARPA authorizes the City to expend ARPA funds awarded to the City for a program, service, capital expenditure, or other assistance that responds to disproportionately impacted small businesses, including rehabilitation of commercial properties; storefront and façade improvements; technical assistance, business incubators, and grants for start-ups or expansion costs for small businesses; and programs or services to support microbusinesses (Final Rule, Section 35.6(b)(3)(ii)(B)(2)); and

WHEREAS, the City has contracted with Subrecipient since 1996 for the purpose of engaging in industrial and business solicitation activities on behalf of the City in order to expand the economic base of Norman, through the retention of existing business and industry and the attraction of new business and industry; and

WHEREAS, the City has identified economic development as a desired use of a portion of the ARPA Funds; and

WHEREAS, the City’s Economic Development Advisory Board reviewed potential uses of ARPA Funds for economic development at its September 2021, November 2021, and January 2022 meetings, culminating in a vote on January 13, 2022 to recommend that \$1,000,000 in ARPA Funds be utilized for the development of an incubator program to be located in a Qualified Census Tract and developed in partnership with the Moore Norman Technology Center, Norman Public Schools, Norman Regional Health System and the Norman Economic Development Coalition; and

WHEREAS, City and Subrecipient desire to enter into this Agreement so that the City may provide ARPA Funds for appropriate and qualifying expenditures of grant funds advanced to the Subrecipient by the City for the provision of certain small business support.

NOW, THEREFORE, in consideration of the above and foregoing, and the terms and conditions set forth below, the parties agree as follows:

1. Effective Date and Term. This Agreement shall commence when last executed by all parties and remain in effect until December 31, 2024, unless terminated by the City in writing.

2. ARPA Funds. The City agrees to provide the Subrecipient a total sum not to exceed \$1,000,000 within 30 days of the effective date of this Agreement to be used for qualifying expenses under the Final Rule related to the development of a business incubator program on the condition that the funds are completely spent no later than December 31, 2024.
3. Subrecipient's Use of ARPA Funds. The Subrecipient shall ensure that ARPA Funds requests are necessary to respond to the negative economic impacts of the public health emergency as provided in the Final Rule.
  - a. General Standards. Subrecipient must satisfy the requirements for all uses under the negative economic impacts eligible use category under the Final Rule, including identifying an impact or harm and designing a response to the identified impact or harm. Responses must be reasonably designed to benefit the individual or class that experienced the impact or harm and must be related and reasonably proportional to the extent and type of impact or harm.
  - b. Capital Expenditures. It is anticipated that some or all of the ARPA Funds provided to the Subrecipient hereunder may be expended for capital expenditures related to a business incubator program. In addition to meeting the General Standard set forth above, if ARPA Funds are expended on a project in the amount of \$1,000,000 or more, Subrecipient must submit a Written Justification for its capital expenditure to ensure the project is responsive to pandemic related needs and is reasonably proportional to the harm identified.
  - c. City Conditions. As the ARPA funds designated herein are specifically for the purpose of the development of a business incubator, disbursement of ARPA Funds under this Agreement are conditioned on expenditure on a business incubator program that is located in a Qualified Census Tract and includes preferences for minority-owned businesses.
4. Ineligible Uses. Non-allowable uses of ARPA Funds include, but are not limited to, the following: (a) usage of funds to either directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation or administrative interpretation during the covered period that reduces a tax or delays the imposition of any tax or tax increase; (b) damages covered by insurance; (c) usage of funds as a deposit into any pension fund; (d) expenses that have been or will be reimbursed under any federal program; (e) debt service costs; (f) contribution to a "rainy day" fund or other replenishment of financial reserves; (g) legal settlements and judgments; (h) usage of funds for programs, services, or capital expenditures that include a term or condition that undermines efforts to stop the spread of COVID-19 as set forth in the Center for Disease Control's guidelines and recommendations; and (i) usage of funds in violation of the conflict of interest requirements contained in the Award Terms and

Conditions of the Office of Management and Budget's Uniform Guidance, including any self-dealing or violation of ethics rules.

5. Reporting Requirements. Subrecipient must submit quarterly Project and Expenditure Reports to City within fourteen (14) days of the end of the each quarter during the term of this Agreement. Additionally, Subrecipient must submit an annual Project and Expenditure report covering each year under this Agreement, the first annual reporting period beginning on July 1, 2022 and ending on June 30, 2023. The annual report should be provided to City within fourteen (14) days of the end of each reportable year under this Agreement. Reports shall provide the following information:
  - a. Project: The Subrecipient shall provide a description of the project and status of completion. Project description must describe the project in sufficient detail to provide understanding of the major activities that will occur, and will be required to be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose.
  - b. Obligations and Expenditures: The Subrecipient should report the current period obligation, cumulative obligation, current period expenditure, and cumulative expenditure.
  - c. Project Status: The Subrecipient should report on project status each reporting period in four categories: not started; completed less than 50%; completed 50% or more; and completed.
  - d. Program Income: The Subrecipient should report the program income earned and expended to cover eligible project costs, if applicable.
  - e. Adopted Budget: The Subrecipient shall provide the budget adopted for the Project to assist the Department of Treasury to better understand the intended impact, identify opportunities for outreach, and understand the Subrecipient's progress in program implementation.
  - f. Project Demographic Distribution. Subrecipient must respond to the following:
    - i. What impacted and/or disproportionately impacted population does the project primarily serve?
    - ii. If the project primarily serves more than one impacted and/or disproportionately impacted population, the Subrecipient may select up to two additional populations serviced.

Subrecipient will select from the following options:

	<b>Impacted</b>	<b>Disproportionately Impacted</b>
Assistance to Small Businesses	<ul style="list-style-type: none"> <li>• Small businesses that experienced a negative economic impact of the pandemic</li> <li>• Classes of small businesses designated as negatively impacted by the pandemic (please specify)</li> </ul>	<ul style="list-style-type: none"> <li>• Small businesses operating in Qualified Census Tracts</li> <li>• Small businesses operated by Tribal governments</li> <li>• Small businesses operating in Norman</li> <li>• Other small business disproportionately impacted by the pandemic (please specify)</li> </ul>

6. Termination. The City may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Subrecipient.
7. Independent Contractor. Each party under this Agreement shall be for all purposes an Independent Contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Subrecipient shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the City for any purpose.
8. Indemnification. The Subrecipient agrees to defend, indemnify, and hold the City, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses, including without limitation personal injury, bodily injury, sickness, disease, or death, or damage or destruction of property, which are alleged or proven to be caused in whole or in part by act or omission of the Subrecipient, its officers, directors, employees, and/or agents relating to the Subrecipient's performance or failure to perform under this Agreement.
9. Compliance with Laws, Guidelines. The Subrecipient shall comply with all federal, state, and local laws and all requirements (including debarment and other required certifications and audits) of the Final Rule and the Compliance & Reporting Guidelines to the extent applicable, when expending ARPA Funds pursuant to this Agreement. Failure to comply with such laws and guidelines may result in forfeiture of ARPA funds and the City shall be entitled to reimbursement of any ARPA funds expended hereunder.
10. Maintenance and Audit of Records. The Subrecipient shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These

records shall be subject to inspection, review and audit by the City or its designee for five (5) years following termination of this Agreement. If it is determined during the course of the audit that the Subrecipient expended funds for unallowable costs under this Agreement, the Subrecipient agrees to promptly reimburse the City for such payments upon request.

11. Notices. Any notice desired or required to be given hereunder shall be in writing and shall be deemed received three (3) days after deposit with the U.S. Postal Service, postage fully prepaid and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Subrecipient:  
Norman Economic Development Coalition  
Attn: Lawrence McKinney, President  
424 W. Main Street  
Norman, OK 73069

City:  
City of Norman  
Attn: Darrel Pyle, City Manager  
P.O. Box 370  
Norman, OK 73070

*With copies to:*  
City of Norman  
Attn: Anthony Francisco, Finance Director  
P.O. Box 370  
Norman, OK 73070

City of Norman  
Attn: Kathryn Walker, City Attorney  
P.O. Box 370  
Norman, OK 73070

12. Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, in any project for which the ARPA Funds provided hereunder are expended or proposed to be expended, which would give rise to a conflict of interest.


13. Time. Time is of the essence in this Agreement.

14. Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. These provisions include without limitation Indemnification and Maintenance and Audit of Records.
15. Amendment. No amendment or modification to this Agreement will be effective without the prior written consent of the authorized representatives of the parties.
16. Governing Law; Venue. The Agreement will be governed in all respects by the laws of the State of Oklahoma, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Agreement may be instituted in the District Court of Cleveland County, Oklahoma.
17. Non-Waiver. No failure on the part of the City to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the City of any right hereunder preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the City at law or in equity.
18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.
19. Assignment. The Subrecipient shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the City.
20. Entire Agreement. This Agreement constitutes the entire agreement between the City and the Subrecipient for the use of ARPA Funds and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.
21. No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation that either Party has to the Department of Treasury in connection with the use of ARPA Funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.
22. Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of the Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.
23. Counterparts. This Agreement may be executed in one or more counterparts, any of which shall be deemed an original but all of which shall constitute one and the same instrument.

24. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

**SUBRECIPIENT**

By:   
Printed Name: Lawrence McKinley  
Title: President & CEO  
Date: June 23, 2022

**CITY OF NORMAN, OKLAHOMA**

By: \_\_\_\_\_  
Stephen T. Holman  
Mayor Pro Tem

Attest: \_\_\_\_\_  
Brenda Hall  
City Clerk

Approved as to form and legality this 23 day of June, 2022.

  
Kathryn L. Walker  
City Attorney