

SUBRECIPIENT AGREEMENT FOR
AMERICAN RESCUE PLAN ACT SLFRF FUNDS

Residences at 9th and Wall (2)

This Subrecipient Agreement ("Agreement"), effective on the date of full execution below, is entered into by and between the County of Weber, Utah (the "County") and the Weber Housing Authority (the "Subrecipient"), individually referred to as "Party" and jointly referred to as "Parties." The purpose of this Agreement is to provide funding to the Subrecipient from funds provided to the County by the State of Utah, Governor's Office of Planning and Budget (the "State") 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 (Mar. 11, 2021) ("ARPA"), which authorized the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") to enable the Subrecipient to carry out specific eligible activities on behalf of the County; and

WHEREAS, the County has received \$1.9 million in SLFRF funds from the State under ARPA (See State of Utah Grant Agreement: Residences at 9th and Wall, hereinafter referred to as the "State Grant"); and

WHEREAS, the County is authorized by the State Grant to disburse all or a portion of its SLFRF funds to Subrecipients, also deemed SubGrantees, in order to complete the project as described in the State Grant; and

WHEREAS, the Subrecipient desires to collaborate with the County to fulfill the purposes of the State Grant, and the Subrecipient has proposed an eligible use of SLFRF funds; and

WHEREAS, based on the Subrecipient's proposed use of SLFRF funds, the scope of which is described and attached hereto as **Exhibit A**, the County has determined that the Subrecipient's Project will fulfill the County's project described in the State Grant and is an eligible use of SLFRF funds under ARPA and the Final Rule; and

WHEREAS, the County has awarded the Subrecipient the full \$1.9 million from the State Grant (the "Award"), subject to the County and the Subrecipient entering into this Agreement with respect to the use of said funds.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the County and the Subrecipient agree as follows:

1. SCOPE OF PROJECT; ELIGIBLE USE OF AWARD FUNDS

- A.** The County shall pay the Subrecipient the Award to cover necessary expenses related to the activities specifically described in the Exhibit A (the "Project"). If there is a conflict between the terms and provisions in the Subrecipient's application and this Agreement, the terms of this Agreement shall govern.
- B.** The Subrecipient shall only use the Award to cover expenses that are necessary for the completion of the Project and are eligible under ARPA, the Final Rule, the State Grant, and this Agreement.

- C. The Subrecipient may make revisions to the scope of the Project with approval from the Weber County Commission, where such revisions to the Project do not materially alter the Project or cause the use of the Award for the revised Project to constitute an ineligible use of SLFRF funds or constitute a change in the category of eligible use of SLFRF funds under the Final Rule or the State Grant. In no event shall a revision to the scope of the Project entitle the Subrecipient to an additional allocation of SLFRF funds by the County unless Subrecipient makes a request to the County for additional funds. The Weber County Commission, in its sole discretion, may approve and authorize additional County SLFRF funds for the Project. However, no such additional allocation is guaranteed. For illustration purposes only, a revision to a Project may include a change in the design, implementation, or construction means and methods that results in the ability to make additional improvements to the Project or serve more properties or individuals. Revisions to the scope of the Project that reduce the extent of the improvements to be made or properties or individuals to be served should be avoided unless necessary to keep the Project within the Subrecipient's budget for the Project and/or the Award to Subrecipient set forth in this Agreement.
- D. Once the Project is completed, all costs for the management, operation, maintenance, and repair and replacement of the Project (as applicable) shall be the sole responsibility of the Subrecipient. The County shall have no liability, financial or otherwise, with respect to the management, operation, maintenance, repair or replacement of the Project.

2. TERM OF AGREEMENT

The term of this Agreement begins on the date this Agreement is fully executed by the Parties and ends on December 31, 2026. Notwithstanding other provisions of this Agreement, this Agreement will remain in effect until the County determines that the Subrecipient has completed all applicable administrative actions, reporting requirements, and all Project work required by and set forth in this Agreement. Should Subrecipient require additional time for auditing of or reporting for the Project in accordance with ARPA and the Final Rule, this Agreement shall be deemed automatically extended until said audit and reporting is completed.

3. PAYMENTS

- A. *Reimbursement Payment.* The County shall pay the Award to Subrecipient on a reimbursement basis. The Subrecipient shall submit reimbursement requests to the County Comptroller no later than 15 days after the end of each calendar quarter for the duration of the Project. Such requests shall be in a form acceptable to the County and include, where applicable for construction projects, certification by the Subrecipient's engineer that the amounts are eligible Project costs. The Subrecipient may not request reimbursements under this Agreement for work that has not been completed.
- B. *Advance Payment.* The County, in its discretion, may elect to pay the Subrecipient in

advance for its allowable costs for the Project identified by this Agreement upon the presentation of all forms and documents as may be required by the County. Advance payments must be limited to the minimum amounts needed and timed to be in accordance with the Subrecipient's actual, immediate cash requirements in carrying out and completing the work of the Project.

- C. *Withholding or Cancellation of Funds.* The County reserves the right to withhold payments until Subrecipient timely delivers reimbursement requests or documents as may be required under this Agreement. Upon completion of the Project, the County may cancel payment of any portion of the Award that the County determines to be surplus. The County shall be relieved of any obligation for payments if funds allocated to the County cease to be available for any cause other than misfeasance of the County itself.
- D. *Where Payments Are Made.* Payments shall be made by check or electronic deposit into Subrecipient's bank account, according to a process established by the County.
- E. *Recoupment.* The Award is subject to recoupment by Treasury and/or the County for the Subrecipient's failure to use the funds for the Project in strict accordance with ARPA, the Final Rule, and this Agreement.

4. OBLIGATION AND EXPENDITURE TIMING REQUIREMENTS; REPORTING REQUIREMENTS

- A. *Timing Requirements.* Subrecipient may use Award funds to cover eligible costs incurred from March 3, 2021 to June 30, 2026, as long as the obligations are incurred by June 30, 2024 and liquidated by June 30, 2026.
- B. *Reporting Requirements.* The Subrecipient shall submit such reports and adhere to all conditions and obligations as are required by the County including, but not limited to, the SLFRF Reporting Requirements attached to this Agreement as **Exhibit B**. Such reporting requirements shall extend beyond the term of this Agreement. The County reserves the right to inspect, at any time, the Subrecipient's records that are related to the Project and/or Subrecipient's performance of this Agreement. Notwithstanding any record retention policies, Subrecipient shall maintain all documentation associated with the Project for the period required by State law or Federal law or seven (7) years, whichever is greater.

5. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

In addition to the requirements set forth in ARPA, the Final Rule, and the State Grant, use of the Award may be subject to various other Federal, State, and Local laws including, but not limited to, the American Rescue Plan Act. Subrecipient shall comply with all applicable Federal, State, and Local laws and regulations with respect to its receipt and use of the Award pursuant to this Agreement.

6. RETURN OF FUNDS; RECOUPMENT

- A. Subrecipient shall return any Award funds not obligated by June 30, 2024 to the County. The Subrecipient must also return Award funds obligated by June 30, 2024 but not expended by June 30, 2026.
- B. If the County, State, or Treasury determines that the Subrecipient's use of the Award does not comply with ARPA, the Final Rule, or this Agreement, the County shall provide the Subrecipient with an initial written notice of the amount subject to recoupment, along with an explanation of such amounts. Within 30 calendar days of receipt of such notice from Treasury, State, or the County, the Subrecipient may submit to the County either (1) a request for reconsideration requesting the County seek a reconsideration of any amounts subject to recoupment under the Final Rule, or (2) written consent to the notice of recoupment.
- C. If the Subrecipient has not submitted a reconsideration request, or if the County denies the reconsideration request, the Subrecipient shall repay the amount subject to recoupment within 30 calendar days of the request for consideration deadline or the County's denial of the request.

7. FAILURE TO PERFORM

If Subrecipient fails to comply with any terms or conditions of this Agreement, or to provide in any manner the activities or other performance as agreed to herein, the County reserves the right to:

- A. withhold all or any part of payment pending correction of the deficiency; or
- B. suspend all or part of this Agreement.

Further, any failure to perform as required pursuant to this Agreement may subject the Subrecipient to recoupment as set forth under ARPA, SLFRF, the State Grant, and this Agreement. The option to withhold funds is in addition to, and not in lieu of, the County's right to terminate as provided in Section 8 below. The County may also consider performance under this Agreement when considering future awards.

8. TERMINATION

- A. *Termination for Cause.* The County may terminate this Agreement for cause if the Subrecipient fails to comply with the terms and conditions of this Agreement and any of the following conditions exist:
 - i. The lack of compliance with the provisions of this Agreement is of such scope and nature that the County deems continuation of this Agreement to be substantially non-beneficial to the public interest;
 - ii. The Subrecipient has failed to take satisfactory corrective action as directed by the County or its authorized representative within the time specified by the same; or

- iii. The Subrecipient has failed within the time specified by the County or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this Agreement.

The County shall initiate termination for cause by providing notice to the Subrecipient of its intent to terminate for cause, accompanied by a written justification for the termination. After receiving the notice of termination for cause, the Subrecipient shall have 15 calendar days to remedy the cause for termination. If the Subrecipient has not remedied the cause for termination within 15 days of receipt of the notice, the County may pursue such recourses as are available by law, including, but not limited to, the termination of this Agreement in whole or in part, and thereupon shall notify in writing the Subrecipient of the termination, the reasons for the termination, and the effective date of the termination. Upon termination, any outstanding Award funds held by the Subrecipient are subject to recoupment by the County in accordance with ARPA, the SLFRF program, and this Agreement. Any costs resulting from obligations incurred by the Subrecipient after termination of this Agreement are not allowable and will not be reimbursed by the County unless specifically authorized in writing by the County.

- B. *Termination for Convenience.* This Agreement may be terminated for convenience, in whole or in part, by written mutual agreement of the Parties.
- C. *Termination for Withdrawal, Reduction, or Limitation of Funding.* In the event funding is not received from the Federal Government or State, or if funding is withdrawn, reduced, modified or limited in any way after the effective date of this Agreement and prior to its normal completion, the County may summarily terminate this Agreement as to the funds not received, reduced, modified, or limited, notwithstanding any other termination provision in this Agreement. If the level of funding is reduced to such an extent that the County deems that the continuation of the Project covered by this Agreement is no longer in the best interest of the public, the County may summarily terminate this Agreement in whole notwithstanding any other termination provisions in this Agreement. Termination under this Section shall be effective upon receipt of written notice by the Subrecipient or its representative.

9. CLOSE OUT

Upon termination of this Agreement, in whole or in part for any reason, including completion of the Project, the following provisions apply:

- A. Upon written request by the Subrecipient, the County will make or arrange for payment to the Subrecipient of allowable reimbursable costs not covered by previous payments.
- B. The Subrecipient shall submit within 30 calendar days after the date of expiration of this Agreement, all financial, performance and other reports required by this Agreement, and in addition, will cooperate in a Project audit by the County or its designee;
- C. Closeout of funds will not occur unless all requirements of this Agreement and Federal, State, and Local law are met and all outstanding issues with the Subrecipient

have been resolved to the satisfaction of the County.

- D. Any unused Award funds in Subrecipient's possession or control shall be immediately returned to the County.

10. INDEMNIFICATION

Any Award funds which are determined by the County, State, or Treasury to be ineligible under ARPA shall be subject to recoupment. To the greatest extent permitted by law, the Subrecipient shall indemnify and hold harmless the County, its appointed and elected officials, and employees from any liability, loss, costs (including attorney fees), damage or expense, incurred because of actions, claims or lawsuits for damages resulting from misuse of Award funds by the Subrecipient, personal or bodily injury, including death, sustained or alleged to have been sustained by any person or persons and on account of damage to property, arising or alleged to have arisen out of the performance of this Agreement, whether or not such injuries to persons or damage to property is due to the negligence of Subrecipient, its subcontractors, agents, successors or assigns.

11. NOTICES

Any notices required to be given by the County or the Subrecipient shall be in writing and delivered to the following representatives for each party:

The County	Subrecipient
County of Weber Attn: County Comptroller 2380 Washington Blvd., Suite 320 Ogden, UT 84401 sparke@webercountyutah.gov	Weber Housing Authority Attn: Andi Beadles 237 26th Street, E220 Ogden , Utah 84401 abeadles@webercountyutah.gov

12. RESERVATION OF RIGHTS

Failure to insist upon strict enforcement of any terms, covenants, or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of any right or power granted through this Agreement at any time be construed as a total and permanent waiver of such right or power.

13. FURTHER ASSURANCE

Each of the Parties shall cooperate in good faith with the other to execute and deliver such further documents, to adopt any resolutions, to take any other official action and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this agreement.

Subrecipient shall, in good faith and to the greatest extent possible, complete the Project in accordance with the Subrecipient's proposed project timeline in the Subrecipient's application.

Subrecipient acknowledges that time is of the essence, and Subrecipient shall exercise due diligence to complete the project in a timely manner.

14. ASSIGNMENT

The Subrecipient shall not assign any portion of the Award, nor responsibility for completion of the Project provided for by this Agreement, to any other party.

15. AMENDMENTS

This Agreement cannot be amended or modified except in writing, signed by both Parties.

16. VENUE AND CHOICE OF LAW

If either part to this Agreement initiates any legal or equitable action to enforce the terms of this Agreement, to declare the rights of the parties under this Agreement, or which relates to this Agreement in any manner, the County and Subrecipient agree that the proper venue for such action is the Utah Second Judicial District. This Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance.

17. SEVERABILITY

If any part of this Agreement is held by the courts to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part held to be invalid.

18. INTEGRATED DOCUMENT

This Agreement, together with all exhibits and attachments, which are incorporated by reference, constitute the entire agreement between the Parties. There are no other agreements, written or oral, that have not been fully set forth in the text of this Agreement.

19. NO THIRD PARTY BENEFICIARY.

Nothing in this Agreement shall create or be interpreted to create any rights in or obligations in favor of any person or entity not a party to this agreement. Except for the Parties to this agreement, no person or entity is an intended third party beneficiary under this agreement.

20. HEADINGS

The section headings of this agreement are for the purposes of reference only and shall not limit or define the meaning thereof.

21. AUTHORITY TO SIGN

The persons executing this Agreement on behalf of the Subrecipient represent that one or both of them has the authority to execute this Agreement and to bind the Subrecipient to its terms.

**BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY**

By _____
Gage Froerer, Chair

Date _____

ATTEST:

Weber County Clerk/Auditor

WEBER HOUSING AUTHORITY

By Andi Beadles
Name ANDI BEADLES
Title Executive Director
Date 11/13/2023

ATTEST:

M. Shaffer

**EXHIBIT A:
SUBRECIPIENT'S SLFRF PROJECT SCOPE**

Project Statement

The Friends of Weber Housing Authority ("FOWHA") is (i) an affiliate of the Weber Housing Authority ("WHA"), and (ii) the sole member of WHA-Meadowbrook, LLC, a Utah limited liability company ("MGP"), and MGP is the managing general partner of Meadowbrook Apartments, LLLP, a Utah limited liability limited partnership (the "Partnership"). The Partnership will build, construct, develop, and own a 46-unit complex for low-income individuals (below 50% AMI) to be known as "Meadowbrook Apartments" (the "Project"). Pursuant to the Subrecipient Agreement by and between the County of Weber, Utah (the "County") and the WHA, to which this Exhibit A is attached, the County will provide a grant of the Award to the WHA. WHA will use the proceeds of such grant to make a subsequent grant to FOWHA, the proceeds of which will be used by FOWHA to make a loan to the Partnership, the proceeds of such loan will be used by the Partnership to fund eligible costs in connection with the construction of the Project. The plan will subsidize eighteen units through WHA with Project-Based Vouchers for chronically homeless, disabled individuals. The Project will provide decent, safe, and affordable housing. Weber Human Services ("WHS") will provide case management services to assist participants as they progress toward self-sufficiency. Case management teams will offer counseling in substance use, mental health treatment, medication management, and life skills training. Team members will also assist participants in identifying triggers that have contributed to their homelessness in the past. Group self-sufficiency classes are offered onsite, and private office space will be available for case managers and therapists to provide services. Onsite amenities will include laundry, community and, computer rooms, and offices for WHS staff. This new construction project will be one self-contained building on a 1.76-acre lot. The Meadowbrook Apartments will have a resident monitor that will oversee the nightly operations of the Project and a WHA staff member will provide security during the day. The project has an estimated completion date of August 2024.

Deliverables/Performance Measures

Our organization will measure the benefits of this Project by increasing the number of deeply affordable housing units available in Weber County. Forty-six (46) additional units will be created and used to enrich our community's quality of life for both the low-income and chronically homeless, disabled households. An additional benefit will be the number of homeless families that will no longer be residing in places not meant for human habitation or at the Lantern House. These households will have access to case management as they strive for self-sufficiency. Still, most importantly, this population will not be utilizing costly homeless resources that do not lead to long-term housing stability. As a result, Weber County will see a decrease in the Point in Time Count numbers. We anticipate the number of homeless individuals sleeping on the streets will decrease by 24% due to this project.

EXHIBIT B:
SLFRF REPORTING REQUIREMENTS

A. Applicable Statutes, Rules, and Guidance

The statutes, rules, and regulations set forth in the Agreement apply with respect to the reporting obligations set forth herein. All terms used herein have the definitions set forth in the Agreement or, if not specified in the Agreement, as set forth in ARPA or the Final Rule. Additionally, Treasury's publication entitled the "Compliance and Reporting Guidance" ("Compliance Guidance")¹ and Treasury's "Project and Expenditure Report User Guide for State and Local Fiscal Recovery Funds" ("User Guide")² apply as noted herein. In addition, the Uniform Administrative Requirements for Federal Awards in 2 CFR Part 200 apply to the Award under this Agreement.

B. Important Concepts

i. Recipients, Subrecipients, Subawards, Loans, and Projects

The definition of "recipient" includes counties that receive a payment under section 602(b) or 603(b) of the Social Security Act. 31 CFR § 3. In this case and as set forth in the Agreement, the County is the recipient of SLFRF funds. A subrecipient includes any non-Federal entity that receives a subaward from a recipient to carry out part of a Federal program, in this case the SLFRF program. See 2 CFR § 200.93. Entities that receive a subaward from the County to carry out the SLFRF program are subrecipients, as defined in the Agreement. A "subaward" is an award of SLFRF funds provided to a subrecipient by a recipient to carry out the SLFRF program. Specifically, under the "public health and negative economic impacts" eligible use category, SLFRF funds may be used to make loans to finance affordable housing provided that (i) the loan has a term of not less than 20 years; (ii) the affordable housing project being financed has an affordability period of not less than 20 years after the project or assisted units are available for occupancy; (iii) the loan is used to finance a project expected to be eligible for the low-income housing tax credit under Section 42 of the Internal Revenue Code of 1986 (the "Code"), (iv) the project owner has agreed to waive its right to request a qualified contract pursuant to Section 42(h)(6)(F) of the Code, and (v) the project owner has agreed to repay any loaned funds to the entity that originated the loan at the time the project becomes non-compliant including if such project ceases to satisfy the requirements to be a qualified low-income housing project (as defined in Section 42(g) of the Code), or if such project fails to comply with any of the requirements of the extended low-income housing commitment that are described in Section 42(h)(6)(B)(i)-(iv) of the Code.³ "Projects" are defined as a group of closely related activities that are intended to meet a certain goal or directed toward a common purpose⁴ or "new or existing eligible government services or investments funded in whole or in part by SLFRF funding."⁵

¹ United States Department of Treasury, Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds, November 15, 2021, <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

² United States Department of Treasury, Project and Expenditure Report User Guide, State and Local Fiscal Recovery Funds, January 24, 2022.

³ Coronavirus State and Local Fiscal Recovery Funds Final Rule: Frequently Asked Questions, last updated April 10, 2023, Question 4.9, page 35

⁴ User Guide, p. 10

⁵ Compliance Guidance, p. 17

ii. Eligible Costs Timeframe

Under this Agreement, the Subrecipient may use Award funds to make a grant to the Friends of the Weber Housing Authority (“FOWHA”), the proceeds of which will be used by FOWHA to make a loan to Meadowbrook Apartments, LLLP, a Utah limited liability limited partnership (the “Project Owner”), the proceeds of which will be used by Project Owner to cover eligible costs incurred from March 3, 2021 to June 30, 2026, as long as the obligations are incurred by June 30, 2024 and liquidated by June 30, 2026.

iii. Obligations

The Final Rule for SLFRF funds defines an obligation as "an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment." 31 CFR § 35.3. The Project and Expenditure Report User Guide also includes contracts as obligations.⁶ Obligation is similarly defined as "orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period," in the Uniform Administrative Requirements for federal awards. 2 CFR § 200.1; 2 CFR § 200.71. For purposes of the Agreement, an obligation is incurred by Project Owner when the Project Owner enters into a contract with a contractor, service provider, or supplier with respect to and in furtherance of the Project; the Agreement between the Subrecipient and the County does not constitute an obligation for purposes of Subrecipient's compliance with the Rule.

iv. Expenditures

Reporting must be consistent with the definition of "expenditure" in 2 CFR Part 200. The Uniform Administrative Requirements for federal awards defines "expenditures" as "charges made by a non-Federal entity to a project or program for which a federal award was received." 2 CFR § 200.1; 2 CFR § 200.34. However, the definition does not clarify whether the "non-Federal entity" is the recipient or the subrecipient. According to the User Guide, an expenditure is "when the service has been rendered or the good has been delivered to the entity, and payment is due."⁷ This definition similarly does not clarify whether "the entity" is the recipient or the subrecipient. For the Project Owner, the service or goods would be delivered to the Project Owner, and then the Project Owner would ask the subrecipient for funds, who would then ask the recipient for funds. Expenditures may be reported on a cash or accrual basis, but the methodology must be disclosed and consistently applied.⁸

For purposes of this Agreement and the Subrecipient's reporting obligations under this Agreement and Exhibit, the County will consider funds "obligated" when the Project Owner incurs the obligation (enters into a contract with a contractor or supplier) and "expended" payment is due to a contractor or supplier under that contract and payment is made by the Project Owner.

C. Required Information for Project and Expenditure Reports

Since the County is required to submit quarterly or annual Project and Expenditure reports (using

⁶ Project and Expenditure Report User Guide, State and Local Fiscal Recovery Funds, p. 12, <https://home.treasury.gov/system/files/136/Project-and-Expenditure-Report-User-Guide.pdf>

⁷ Project and Expenditure Report User Guide, State and Local Fiscal Recovery Funds, p. 12, <https://home.treasury.gov/system/files/136/Project-and-Expenditure-Report-User-Guide.pdf>

⁸ Compliance Guideline, p 9

the **Assistance Listing Number 21.027**), the Subrecipient is required to provide the County with the necessary information on the Project in a timely manner so that the County can comply with its reporting obligations under ARPA and the Final Rule. The Subrecipient shall provide necessary information to the County within 15 days of the end of each quarter to facilitate the County's filing of such reports. The County will furnish Subrecipient with forms or links to submit information for the Project and Expenditure reports.

Subrecipients **must be** registered in SAM.gov and must provide identifying and demographic information (DUNS number, Unique Entity Identifier (UIE) number, or its Taxpayer Identification number (TIN), and location) to the County in order to receive ARPA funds.

III. Civil Rights Compliance

The Treasury will request information regarding Subrecipient's compliance with Title VI of the Civil Rights Act of 1964 on an annual basis. This may include a narrative describing the Subrecipient's compliance in addition to other questions or assurances.