

**CITY OF EL PASO,  
TEXAS AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**AGENDA DATE:** February 7, 2023  
**PUBLIC HEARING DATE:** N/A  
**CONTACT PERSON(S) NAME AND PH. NUMBER:** Elizabeth K. Triggs, (915) 212-0094  
Sam Rodriguez, (915) 212-7301  
**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** Goal 1: Create an environment conducive to strong sustainable economic development

**SUBGOAL:** Goal 1.1 Stabilize and expand El Paso's tax base

**SUBJECT:**

Discussion and action that the Director of Aviation is authorized to create and amend policies for the lease of the El Paso Makes: Innovation Factory and buildings within the Advanced Manufacturing Campus; to execute, amend and administer these leases approved by the City Attorney's Office as to form; authorized to execute any MOU or similar agreements, approved by the City Attorney's Office as to form, with community partners for their use of space at the Advanced Manufacturing Campus; that the Director of Economic Development is authorized to create a policy to use the appropriated Coronavirus State and Local Fiscal Recovery Funds to assist small businesses located at the Innovation Factory; that the City Manager, or designee(s), is authorized to perform any budget transfers and execute any related documents required to effectuate the intent of this resolution.

**BACKGROUND / DISCUSSION:**

Stabilizing and expanding El Paso's tax base is a key strategy identified by the City of El Paso's strategic plan as an area of focus to support traction toward the development of a vibrant regional economy and a high quality of life and place for the City's residents. Through integrated planning efforts led by the University of Texas at El Paso's Aerospace Center and W.M. Building, advanced manufacturing has been identified as a target industry cluster supporting a number of emerging markets aerospace, defense, renewable and alternative energy.

Advanced manufacturing builds on a number of local competitive strengths, including: 1) an existing resilient manufacturing base with specialization in primary metals manufacturing; 2) a diverse, highly skilled, industry-ready talent pool; 3) world-class manufacturing education programs supplied by UTEP and other institutions of higher education; 4) a Tier 1 university leading applied research in advanced manufacturing; 5) a proximity to strategic military assets critical to national defense, including Fort Bliss and White Sands Missile Range; and 6) proximity to significant private investment in commercial space both in southern New Mexico and west Texas.

Through a focused and integrated approach, the West Texas Aerospace and Defense coalition, led by UTEP's Aerospace Center, was one of 21 coalitions, out of a pool of more than 500 candidates, selected by the Economic Development Administration for participation in the American Rescue Plan-funded Build Back Better Regional Challenge. Through that program, the City and UTEP were awarded \$40 million to develop the El Paso Makes: Advanced Manufacturing District at the El Paso International Airport and provide a system of supportive infrastructure, services and resources to: 1) accelerate the entrance of the region's small and medium manufacturers into aerospace and defense markets; 2) incubate startups and recruit new businesses focused on these markets and advanced manufacturing; 3) train the local workforce in advanced skills and technologies that lead to quality jobs; and 4) make El Paso and the region a destination for investment in aerospace and defense and advanced manufacturing.

The purpose of this policy is to grow the advanced manufacturing industry cluster to foster economic prosperity and create high-paying career pathways for El Paso's residents, including an update on the development and construction of the El Paso Makes: Advanced Manufacturing District at the El Paso International Airport.

The El Paso Makes: Innovation Factory Incentive and Lease Policy, contains guidelines on the leasing of space at the El Paso Makes: Innovation Factory and the provision of incentives to Small Businesses occupying the Innovation Factory. Small Businesses, as defined by this Policy, are relatively immature new or existing manufacturing technology businesses targeting the aerospace, defense, or other advanced manufacturing markets; and would greatly benefit from incubation services. Economic Development Incentives, funded through ARPA, will provide a mechanism to offset costs associated with Small Business'(re)location to the Innovation Factory.

**PRIOR COUNCIL ACTION:**

- **October 2021** – City Council approved the City's participation in the West Texas Aerospace and Defense Coalition's application to the federal Build Back Better Regional Challenge
- **December 2021** – City Council, through the strategic planning process, reaffirmed the City's commitment to growing the regional advanced manufacturing cluster by adopting a strategic objective to "grow existing and attract new target industries, including advanced manufacturing and international development; creating an innovation-driven culture of technology that fosters economic prosperity and creates high-paying career pathways";
- **February 2022** – City Council provides \$1.5 million match to secure the \$1.5 million Build to Scale: Venture Challenge grant, in partnership with UTEP, to assist local manufacturers in scaling operations;
- **February 2022** – City Council approved a performance-based economic incentive to Schneider Electric, securing \$17 million investment for the company's expansion in El Paso, including 370 new jobs and the retention 1,130 existing jobs, making El Paso the company's largest manufacturing footprint in the nation;
- **May 2022** – The City enters into an MOU with General Motors, El Paso Electric and the Chamber to accelerate El Paso's energy transition through several initiatives, including a micro grid pilot project at the airport and carbon foot printing of local manufacturers;
- **August 2022** – City Council allocated \$3 million in local American Rescue Plan funding to assist small manufacturing businesses negatively impacted by the pandemic;
- **September 2022** – Of more than 500 applicants nationwide, the West Texas Aerospace and Defense Coalition was one of 21 coalitions selected for award under the Build Back Better Regional Challenge, resulting in a \$40 million grant to the City (\$25 million) and UTEP (\$15 million);

**AMOUNT AND SOURCE OF FUNDING:**

ARPA Funds FRF13

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?   X   YES    NO**

**PRIMARY DEPARTMENT:** Economic & International Development

**SECONDARY DEPARTMENT:** El Paso International Airport

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

## **RESOLUTION**

**WHEREAS**, on March 11, 2021, President Joseph R. Biden signed the American Recovery Plan Act of 2021 into law and appropriated \$3 billion to be awarded by the United States Department of Commerce’s Economic Development Administration (EDA) to assist communities nationwide in their efforts to build back better by accelerating economic recovery and building local economies that will be resilient to future shocks; and

**WHEREAS**, through the American Recovery Plan Act, funding became available across six programs, including the Build Back Better Regional Challenge; and

**WHEREAS**, in October of 2021, City Council supported the City’s participation in the West Texas Aerospace Manufacturing Coalition (“Coalition”) led by UTEP’s Aerospace center and the submission of the Coalition’s application to the Build Back Better Regional Challenge Phase 1; and

**WHEREAS**, in December of 2021, from a pool of 529 applicants, the EDA announced that this coalition was one of sixty coalitions nationwide awarded Phase 1 Funding under the Build Back Better Challenge, and invited the Coalition to apply for Phase 2; and

**WHEREAS**, the Coalition’s application requested \$100 million dollars to fund several projects, among them the construction of an Advanced Manufacturing District; and

**WHEREAS**, on September 2, 2022, EDA announced that the Coalition’s application was selected, however, only \$40 million dollars were approved by the EDA; and

**WHEREAS**, out of the \$40 million dollar grant, the Coalition allocated \$25 million dollars to the construction of three buildings within the Advanced Manufacturing District; and

**WHEREAS**, at the end of construction, the three buildings within the Advanced Manufacturing District will be leased to manufacturers in the advanced manufacturing, defense, aerospace, and related industries; and

**WHEREAS**, related to but separate from the EDA grant, the City of El Paso has completed the construction of the Innovation Factory located 501 George Perry Blvd (“Innovation Factory”); and

**WHEREAS**, although no EDA funds were used for the construction of the Innovation Factory, the Innovation Factory is a crucial component of the Advanced Manufacturing Campus and was constructed to bolster defense and manufacturing capabilities by attracting and assisting new entrants into those industries in the region while also building the skills of our area’s workforce; and

**WHEREAS**, on August 1, 2022 City Council approved the appropriation of \$3,000,000 of grant funds from the Coronavirus State and Local Fiscal Recovery Funds to assist impacted or disproportionately impacted small businesses in the manufacturing industry sector; and

**WHEREAS**, such funds will be used to assist tenants leasing space at the Innovation Factory that meet the requirements of the Coronavirus State and Local Fiscal Recovery Fund; and

**WHEREAS**, the City wishes to set the framework for the leasing, operation, and maintenance of the Advanced Manufacturing Campus and Innovation Factory in accordance to the requirements of the EDA grant and the Coronavirus State and Local Fiscal Recovery Fund.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

1. That the Director of Aviation is authorized to create and amend policies for the lease of the Innovation Factory and buildings within the Advanced Manufacturing Campus to businesses engaged in the aerospace, defense, advanced manufacturing and related sectors, as determined by the Director of Aviation, in compliance with all applicable grant and FAA requirements.
2. That the Director of Aviation, or designee, is authorized to execute and amend leases of space within the Innovation Factory and buildings constructed within the Advanced Manufacturing Campus provided such leases are approved by the City Attorney's Office as to form.
3. That the Director of Aviation, or designee, is authorized to exercise all rights within the executed agreements including termination of such leases.
4. That the Director of Aviation, or designee, is authorized to execute any MOU or similar agreements with community partners such as UTEP for the provision of services and use of space at the Innovation Factory and other buildings located in the Advanced Manufacturing Campus provided such agreements are approved by the City Attorney's Office as to form.
5. That the Director of Aviation, or designee, is authorized to execute any related documents required to execute the policies and agreements authorized by this resolution.
6. That the Director of Economic Development is authorized to create a policy to use the appropriated Coronavirus State and Local Fiscal Recovery Funds to assist small businesses with the payment of rents and related expenses at the Innovation Factory.
7. That the Director of Economic Development, or designee, is authorized to execute any grant agreements, if necessary, with small businesses to cover rents and related expenses
8. That the Director of Economic Development, or designee, is authorized to exercise all rights within the executed grant agreement including termination of such agreements, if any.
9. That the Director of Economic Development, or designee, is authorized to execute any related documents required to execute the grant policy and administer the grant agreements, if any.
10. The City Manager, or designee, is authorized to perform any budget transfers in accordance to the purposes of this resolution.

*(Signatures Begin on Following Page)*

**APPROVED** this \_\_\_\_\_ day \_\_\_\_\_ 2023.


**THE CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor


**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk


**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Elizabeth Triggs, Director  
Economic & International Development  
Department

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Russell T. Abeln  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Samuel Rodriguez, Chief Operations Officer  
Aviation Department



# EL PASO MAKES: INNOVATION FACTORY

INCENTIVE AND LEASE POLICY

# El Paso Makes: Innovation Factory Policy

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# **El Paso Makes: Innovation Factory Policy**

## **SECTION I. PURPOSE**

On August 1, 2022, City Council approved a Resolution for appropriation of \$3,000,000 of the grant funds from the Coronavirus State and Local Fiscal Recovery Funds, to assist impacted or disproportionately impacted small businesses in the manufacturing industry sector in accordance with the requirements stipulated by the American Rescue Plan Act (“ARPA”) and federal guidelines in the Final Rule to cover expenses incurred to respond and recover from the COVID-19 public health crisis. Per the Resolution, such funding may be used to provide loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees and mortgage, rent, utility, and other operating costs; and technical assistance, counseling or other services to support business planning; or other assistance as identified in the Final Rule to support impacted and disproportionately impacted small businesses in the manufacturing industry sector, to include small business startups, microbusinesses, or individuals seeking to start small or microbusinesses.

The El Paso Makes: Innovation Factory Incentive and Lease Policy (“Policy”), contains guidelines on the leasing of space at the El Paso Makes: Innovation Factory (“Innovation Factory”) and the provision of incentives to Small Businesses occupying the Innovation Factory. Small Businesses, as defined by this Policy, are early stage, new or existing manufacturing technology businesses targeting the aerospace, defense, or other advanced manufacturing markets; and would greatly benefit from incubation services. Economic Development Incentives, funded through ARPA, will provide a mechanism to offset costs associated with Small Business’(re)location to the Innovation Factory.

The Innovation Factory is owned by the City of El Paso (“COEP”), managed by the El Paso International Airport (“ELP”), and is located at 501 George Perry Drive, El Paso, Texas 79925. The Innovation Factory was built for the purpose of incubating and accelerating Small Businesses, as defined herein, and connecting them to aerospace and defense markets. Applicants approved under this policy will lease space at the Innovation Factory.

This document is meant to serve as a guide for COEP staff and does not create any obligations on COEP. The COEP may modify this policy as the deemed necessary for the benefit of the COEP, always in accordance with local, state and federal regulations. Notwithstanding anything to the contrary, this document does not confer any rights to any party.

## **SECTION II. DEFINITIONS**

**Aerospace Center at The University of Texas at El Paso** - The Aerospace Center’s mission is to educate and prepare a diverse, future-ready workforce for high-paying, in-demand careers through project-based learning in applied, cutting-edge research in aerospace, defense, and energy.

**Aerospace Markets** - Product is integrated into or is an aircraft, rocket, missile, spacecraft, or any product that is meant to operate in the earth’s atmosphere or space beyond. A product is also considered related to aerospace if the item is critical for the operation or maintenance of aircraft, rockets, missiles, spacecraft, satellites, or any other items that are meant to operate in the earth’s atmosphere or space beyond.

**Advanced Manufacturing** - The use of innovative technologies that enhance business competitiveness by increasing quality, productivity, and efficiency. Advanced manufacturing can include production activities that depend on the information, automation, computation, software, sensing, and networking.



## **El Paso Makes: Innovation Factory Policy**

**Applicant** – A business that submits a formal application requesting incentives under the City of El Paso’s Innovation Factory Policy. Applicants will be Small Businesses, as defined herein, focusing on product development with the use of advanced manufacturing technologies, focused on maturing advanced manufacturing technologies or focused on deploying advanced manufacturing technologies. Markets for these Small Businesses could include, but is not limited to, aerospace and defense or renewable or alternative energy.

**Common Areas** – Areas of the building that are available for use by all tenants on a non-exclusive basis.

**Cybersecurity** - Different types of activities whose goal is to protect digital infrastructure from unauthorized access or harm.

**Early Stage** – The Small Business’s idea or proposed product is deemed scalable and is gaining more customer traction attracting larger funding.

**El Paso Makes: Innovation Factory (“Innovation Factory”)** - Owned by the City of El Paso, managed by the El Paso International Airport (ELP), and is located at 501 George Perry Drive, El Paso, Texas 79925, built for the purpose of encouraging aerospace, defense, and advanced manufacturing.

**Facility Manager** - A professional who oversees the daily operations of the Innovation Factory.

**Growth Stage** – The company has reached a consistent customer base and is producing income consistently. This stage is often accompanied by an increase in employees to manage the growing workload.

**Landlord** – The El Paso International Airport.

**Lease** – A legal, binding contract outlining the terms under which a person or corporate entity agrees to rent property owned by the COEP and managed by the El Paso International Airport.

**Leased Space** - Areas of the building that are available for a tenant’s exclusive use, as specified in the lease contract.

**National Defense Market** - Assists the federal or state government with ensuring national safety, welfare, and economy particularly resulting from foreign military action or natural disaster. An item is also considered related to national defense if the product is incorporated into another item that is used to assist the federal or state government with ensuring national safety, welfare, and economy particularly resulting from foreign military action or natural disaster.

**Operating Hours** - Monday through Friday from 8am to 5pm, excluding holidays.

**Panel** – One representative each from the Aerospace Center and the W.M. Keck for 3D Innovation at UTEP and four representatives from the City of El Paso.

**Pre-Seed Stage** - This stage typically refers to the period in which a company's founders are first getting their operations off the ground, often verifying the viability of the idea and completing their business model.

**Seed Stage** – The idea becomes a business with customer traction.

**Small Business** – early stage, new or existing manufacturing technology businesses targeting aerospace, defense and other advanced manufacturing markets; and would benefit greatly from incubation services.

# **El Paso Makes: Innovation Factory Policy**

**Tenant** - A person or a corporate entity leasing space at the Innovation Factory.

**W.M. Keck Center for 3D Innovation at the University of Texas at El Paso (Keck Center)** - A multidisciplinary research center focused on the use and development Additive Manufacturing (AM) technologies with primary focus areas in AM Technology Development, Engineered and Structured Materials, and Advanced AM Applications.

## **SECTION III. ECONOMIC DEVELOPMENT INCENTIVES**

Selected applicants will receive from the COEP up to a 100% subsidy of the rent and associated expenses for the lease of space at the Innovation Factory. The funding will come from American Rescue Plan Act funds for years 2023-2026. Per ARPA requirements, these funds must be allocated by year end 2024 and expended by year end 2026.

Applicants may request funds for tenant improvements at the Innovation Factory in an amount approved by the panel.

In order to comply with Federal Aviation Administration regulations, ELP must charge fair market value for the lease of space owned by the COEP, managed by ELP. The rental payments under the lease approved under this policy will be calculated on an annual basis and due in advance. In the event of a cancellation of a grant agreement, no refunds of rental payments will be made by ELP, however, ELP will ensure to credit any rental payments made to ensure that ELP does not charge duplicate rent for the same space. Any charges for expenses made by ELP will be reconciled annually and ELP will credit any overpayments. Refund of funds will only be made if a credit is not appropriate. In the event of a refund of funds by ELP, the tenant will not be entitled to such refund but rather the refund will be made back to the City where the funds will be reallocated to other applicants in accordance with any applicable ARPA regulations.

## **SECTION IV. ELIGIBILITY REQUIREMENTS AND SELECTION**

In order to be eligible for incentives and to lease space at the Innovation Factory, a person or a corporate entity must:

- A. Fill-out and submit a complete application as provided by COEP;
- B. Demonstrate negative economic impact caused by COVID, as required by ARPA;
- C. Provide a business plan or proforma to include current and projected revenue;
- D. Provide the number of employees; and
- E. Provide detailed information about any required tenant improvements to property, if applicable.

To be eligible an applicant, the applicant must be a Small Business that is focused on at least one of the following areas:

- A. Focuses on developing a product or technologies using advanced manufacturing technologies;
- B. Focuses on maturing advanced manufacturing technologies or advanced materials;
- C. Focuses on deploying advanced manufacturing technologies as a service;
- D. Manufactures products that will accelerate the adoption of alternative or renewable sources of energy; or
- E. Manufactures products for aerospace or national defense markets.

## **El Paso Makes: Innovation Factory Policy**

Office space not needed to support manufacturing will be available to Small Businesses that support manufacturing. To be eligible these spaces, an applicant must be a Small Business that:

- A. Provides design engineering services for manufacturers;
- B. Develops cybersecurity solutions for manufacturers, or
- C. Develops software or system designs for aerospace and defense markets, or other markets requiring manufacturing technology, including but not limited to renewable and alternative energy markets.

A panel consisting of staff from the COEP, the Aerospace Center and the W.M. Keck Center for 3D innovation will select applicants based on the following considerations:

- A. Rational, workable technology solution for product or service;
- B. A solid business plan with a proven market for product or service;
- C. Applicant's demographic information (gender, race, ethnicity, and educational attainment) that ensures we are serving a broad and diverse cross section of our community and that is reflective of our community's demographics;
- D. Commitment to growing in El Paso;
- E. Potential to produce jobs in the local area; and
- F. Potential for growth into the Advanced Manufacturing District.

To aid in decision making and at the discretion of the panel, the applicant may be invited to present their application and pitch deck in person.

### **SECTION V. UTEP INCUBATION SERVICES**

UTEP will be responsible for incubation service delivery to tenants through the El Paso Makes: Innovation Network for Manufacturers. The programming is designed to make the tenant competitive and to introduce the tenant to potential customers in aerospace and defense markets. Services include, but are not limited to:

#### **A. Technology Innovation**

- 1. Technology and digital infrastructure assessment;
- 2. Product and process development and improvement;
- 3. Prototyping;
- 4. Research and development support;
- 5. Technical consultation about the adoption of digital integration strategies; and
- 6. Technical consultation about the adoption of advanced manufacturing technologies.

#### **B. Infrastructure & Facilities**

- 1. Technical consulting on facility and process upgrades required for AS9100D quality certifications; and
- 2. Technical consulting on facility and process upgrades for ITAR registration.

#### **C. Talent Acquisition & Development**

- 1. Assessment of workforce needs and connection with existing programs and training dollars to support training and workforce needs; and
- 2. Development of training programs to support workforce needs.

# **El Paso Makes: Innovation Factory Policy**

## **D. Business Fundamentals**

1. Department of defense contracting assistance;
2. One-on-one business coaching and support; and
3. Development of financing plan and connection to potential financing sources.

## **E. Business Growth**

1. Access to CONNEX El Paso, a supply chain database tool to connect to new customers and suppliers and active support from Innovation Network staff to connect customer to new business opportunities;
2. Annual Aerospace and Defense Supplier Summit;
3. Annual Technology Forum;
4. Monthly networking meetings; and
5. Promotion at aerospace and defense trade shows.

## **F. Evaluation of Progress**

Tenants will receive incubation services for three years. At the end of that term, the tenant will be evaluated based on a number of criteria that will depend on the type of company and its business and technology maturity to determine whether to continue incubation services or to graduate them into the acceleration track. Companies who graduate into acceleration services will be invited to lease in the Advanced Manufacturing District and will continue to receive services as needed through the Innovation Network for Manufacturers.

Tenants are required to provide a semi-annual report to UTEP, COEP and ELP, documenting growth and progress. The semi-annual report is to be comprised of:

1. Any updates to business plan
2. Number of employees;
3. Annual revenue; and
4. New business/contracts through support from Innovation Network.

Tenants are also required to respond to an annual survey administered by UTEP. Tenants are encouraged to collaborate with other tenants. Tenants are encouraged to attend meetings hosted by UTEP for Innovation Factory Tenants.

COEP and ELP at their sole discretion may provide other or similar types of services to tenants that are aimed at assisting small businesses.

## **SECTION VI. LEASE**

### **A. Use Requirements**

Tenants must use the property based on the eligibility requirements and as submitted in the application.

### **B. Minimum Space Requirements**

A person or entity applying to lease space at the Innovation Factory must lease at least one maker space, one office, and one storage unit. Any exceptions must be approved by the COEP.

Individual offices may be leased in the event that all maker spaces are leased and offices remain available.

## **El Paso Makes: Innovation Factory Policy**

### **C. Term**

COEP may enter into a lease with an Eligible Person or entity for a term not to exceed 3 years provided, however, that the actual term granted to an Eligible Person will be determined on a case-by-case basis. A tenant may apply for a renewal of a lease no later than 2 months prior to the expiration of the Tenant's current lease.

### **D. Insurance**

All tenants are required to have Renter's Insurance, Fire and Extended Coverage Insurance, and Commercial General Liability Insurance for the term of their lease.

### **E. Lease Rate**

All tenants will be required to pay the Lease Rate as provided in the Lease Agreement.

### **F. Expense Amounts**

Tenants will be required to pay for their pro rata portion of expenses at the Innovation Factory as set in the Lease. The following amenities and services are included as part of the Expense Amount:

1. Utilities (gas, water, wastewater, electricity);
2. Conference room access;
3. Break room access;
4. Building Insurance;
5. Maintenance;
6. Common area janitorial services;
7. Trash Services;
8. Pressurized Air;
9. 24-hour access;
10. Parking;
11. Building Security during operating hours; and
12. Property Management Service.

Nothing in this policy obligates the City to provide the services above. The City will conduct a reconciliation of the expenses at the end of each year. The tenant will be responsible for paying any expenses that exceed the actual Expense Amount paid by the tenant. The City will credit any overpayments to the tenant. No refunds will be issued. Following the reconciliation every calendar year, the Landlord will establish a new Expense Amount and will notify the Tenant of the new Expense Amount. The Tenant will pay the new Expense Amount within 30 calendar days of notification by the Landlord.

### **G. Not Included in the Lease Rate**

The following are not included as part of the lease rate. Tenant is responsible for obtaining and paying for the following:

1. Renter's insurance and fire and extended coverage;
2. Commercial liability insurance;
3. Environmental pollution liability insurance;
4. Real Property Taxes; and
5. Inventory, Equipment and Personal Property Taxes.

## **El Paso Makes: Innovation Factory Policy**

The tenant may elect to obtain the following services at the tenant's expense:

1. Janitorial services to leased space areas; and
2. Telephone and internet service.

### **H. Subleasing and Assignment**

A tenant may not sublease or assign a lease without the express written consent of ELP.

### **I. Innovation Factory Regulations**

All tenants will abide by the Innovation Factory Regulations ("Regulations") published by the Airport pertaining to the lease and use of space at the Innovation Factory. ELP will publish the Regulations on its website. ELP may change the Use Regulations as ELP deems necessary in the best interest of the airport and the Innovation Factory. All tenants will abide by any new Regulations published by ELP on the website.

## **SECTION VII. TERMINATION**

COEP may cancel the lease and/or grant agreement following a 30-calendar day written notice, if COEP determines, in its sole discretion, that this lease must be canceled for any of the following reasons: (1) to allow COEP to comply with any Federal Aviation Administration or other federal or state agency requirements, (2) COEP requires the Premises for aeronautical purposes, or (3) COEP requires the Premises for any other municipal or airport purposes in the sole discretion of COEP.

Cancellation for failure to comply with requirements. If the tenant fails to comply with the requirements of the policy, this lease agreement, or the grant agreement following notice and a 30-calendar day opportunity to cure, then COEP may cancel any or all agreements with the tenant, at COEP's sole discretion, and the tenant will be responsible for repaying any funds granted under the grant agreement and responsible for any amounts under the lease agreement.

Cancellation by Tenant. Tenant may cancel the lease agreement and grant agreement upon 90-calendar day written notice if the tenant is unable to continue its business operations in accordance to the application approved for grant funds. The notice provided by the tenant must explain the reasons the tenant is unable to continue to operate its business as provided in the application approved for the grant funds. Upon receipt of notification COEP may immediately reallocate any funds approved for the tenant.

# El Paso Makes: Innovation Factory Policy

## EXHIBIT A – Innovation Factory Program Application

In order to be eligible for incentives and to lease space at the Innovation Factory, a person or a corporate entity must:

Fill-out and submit a complete application as provided by COEP,  
Provide a business plan or proforma to include current and projected revenue,  
Provide the number of employees; and provide detailed information about any proposed tenant improvements to property, if applicable.

### Applicant Information

1. Applicant Company \*

2. Name of Founder/ Point of Contact \*

3. Email \*

4. Phone \*

5. Applicant headquarters address \*

## El Paso Makes: Innovation Factory Policy

6. If considered a startup, select your startup stage. The definitions provided are to be used only for the purposes of this application and the El Paso Makes Innovation Factory program. \*

- ☐ **Pre-Seed Stage:** This stage typically refers to the period in which a company's founders are first getting their operations off the ground, often verifying the viability of the idea and completing their business model.
- ☐ **Seed Stage:** The idea becomes a business with customer traction. Equity is often provided in exchange for larger amounts of funding.
- ☐ **Early Stage:** The idea is deemed scalable and is gaining more customer traction attracting larger funding. This phase is often before the first series A funding round.
- ☐ **Growth Stage:** The company has reached a consistent customer base and is producing income consistently. This stage is often accompanied by an increase in employees to manage the growing workload.
- ☐ **Small Business:** Small Businesses are generally considered as a privately owned, for-profit enterprises with 500 employees or fewer with certain exceptions depending on industry.
- ☐ Other

7. Business Structure \*

- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ LLC
- ☐ C Corp
- ☐ S Corp
- ☐ Non-Profit (501 C3)

8. Briefly describe the products that will be manufactured and the method of manufacturing such products: \*



## El Paso Makes: Innovation Factory Policy

### 9. Website and Social-media \*

### 10. To be an eligible applicant, the applicant company must be focused on at least one of the following areas: \*

- ☐ Focuses on developing a product or technologies using advanced manufacturing technologies;
- ☐ Focuses on maturing advanced manufacturing technologies or advanced materials;
- ☐ Focuses on deploying advanced manufacturing technologies as a service;
- ☐ Manufactures products that will accelerate the adoption of alternative or renewable sources of energy; or
- ☐ Manufactures products for aerospace or national defense markets

### 11. Office space not needed to support manufacturing startups will be available to businesses that support manufacturing. To be eligible these spaces, an applicant must be a startup that

- ☐ Provides design engineering services for manufacturers
- ☐ Develops cybersecurity solutions for manufacturers
- ☐ Develops software or system designs for aerospace and defense

### 12. Have you received incentives from any of these organizations in the past?

- ☐ City of El Paso
- ☐ El Paso County
- ☐ State of Texas
- ☐ None of the above

## El Paso Makes: Innovation Factory Policy

13. Describe the problem you are solving \*

14. Describe who you are solving the problem for \*

15. How are you solving it? \*

16. Number of people working full-time \*

17. Number of people outside El Paso \*

18. Number of people working part-time \*

19. Please, select all that apply: The applicant company is a \*

- ☐ UTEP Keck Center Spinoff
- ☐ West Texas community startup
- ☐ Startup/small business from outside the region
- ☐ Other

## El Paso Makes: Innovation Factory Policy

20. How many people will be using the Innovation Factory?

*\*Please note that office spaces have a max occupancy of two \**

- ☐ 2-5
- ☐ 6-10
- ☐ 11-15
- ☐ 15+

21. Describe your plans for growth in El Paso \*

22. Do you require improvements or enhancements for the space? \*

- ☐ Yes
- ☐ No

23. If you replied "Yes" to question 22, please, describe necessary improvements or enhancements for your space \*

24. Have you leased a workspace before? \*

- ☐ Yes
- ☐ No

25. If you replied "Yes" to question 24, please provide rate and zip code of your previous location \*

## El Paso Makes: Innovation Factory Policy

### Employee Demographics

Please, fill out this section describing your team to the best of your knowledge. This is confidential information and will only be reported by aggregate.

26. How many people on your team are self described as female?

*\* Note: This question is meant to capture and understand trends in the representation of females in STEM related fields. \**

27. Please, describe people belong to the following races \*

	1-5	6-10	11-15	16-20	20+
White	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Black or African American	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Native Hawaiian or Other Pacific Islander	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Hispanic or Latinx	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Asian	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Prefer not to respond</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## El Paso Makes: Innovation Factory Policy

28. Please, describe how many people belong to the following educational attainment categories \*

	1-5	6-10	11-15	16-20	20+
Master's degree	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bachelor's degree	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Associate's degree	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Some college, no degree	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
High school diploma or equivalent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
No formal educational credential	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Prefer not to respond</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## El Paso Makes: Innovation Factory Policy

### Tenant Requirements

29. Expected move-in day \* Please input date (M/d/yyyy)

30. Manufacturing space (SF) \*

31. Office space (SF) \*

32. Storage space (SF) \*

### Please Provide the Following

*\*Tenants must fill out and submit a Form 1295 with the Texas Ethics Commission. For more information visit <https://www.ethics.state.tx.us/filinginfo/1295/>.*

33. Upload business plan or proforma \*

↑ Upload file

File number limit: 5 Single file size limit: 10MB Allowed file types: Word, Excel, PPT, PDF, Image, Video, Audio

34. Upload pitch deck \*

↑ Upload file

File number limit: 5 Single file size limit: 10MB Allowed file types: Word, Excel, PPT, PDF, Image, Video, Audio

## El Paso Makes: Innovation Factory Policy

35. Articles of Incorporation \*

📄 Upload file

File number limit: 5 Single file size limit: 10MB Allowed file types: Word, Excel, PPT, PDF, Image, Video, Audio

36. Certificate of Authority from the Texas Secretary of State \*

📄 Upload file

File number limit: 5 Single file size limit: 10MB Allowed file types: Word, Excel, PPT, PDF, Image, Video, Audio

37. Proof of signatory authority \*

📄 Upload file

File number limit: 5 Single file size limit: 10MB Allowed file types: Word, Excel, PPT, PDF, Image, Video, Audio

38. Upload information regarding space improvements and enhancements including specifications and safety measures. Modifications will be subject to panel approval \*

📄 Upload file

File number limit: 5 Single file size limit: 10MB Allowed file types: Word, Excel, PPT, PDF, Image, Video, Audio

### Billing Contact Information

39. Name \*

40. Phone \*

41. Email \*

42. Billing Address \*

## El Paso Makes: Innovation Factory Policy


### COVID 19 Impact

Please check the boxes that best describe the impact of COVID 19 on your company

43. My company has been impacted by COVID 19 in the following ways \*

- ☐ Decreased revenue or gross receipts
- ☐ Financial insecurity
- ☐ Increased costs
- ☐ Capacity to weather financial hardship
- ☐ Challenges covering payroll, rent or mortgage, and other operating costs
- ☐ Other

44. Please upload supporting evidence of negative economic impact of COVID 19. *(Can use items such as profit loss statement.)* \*

 Upload file

File number limit: 5 Single file size limit: 10MB Allowed file types: Word, Excel, PPT, PDF, Image, Video, Audio

45. Signature \*

46. Date \*

Please input date (M/d/yyyy)





## EXHIBIT B — Innovation Factory Building Regulations

All persons leasing or using space at the Innovation Factory must abide by these Innovation Factory Regulations (“Regulations”).

1. **Maintenance.** Tenant will maintain all Leased Space and Common Areas in a clean, safe and orderly condition at all times. Tenant will not tamper or attempt to fix any fixtures in the Common Areas and Leased Space. Tenant will report all problems to the Facility Manager or to the after-hours phone line provided by Facility Manager.
2. **Alterations and Improvements.** No alterations or improvements to Leased Space shall be made without the prior Landlord’s written approval. Tenant shall not make alterations or improvements to Common Areas.
3. **Tenant’s Contractors and Technicians.** All contractors, contractor's representatives and installation technicians performing work in the Building shall be subject to Landlord's prior approval and shall be required to comply with Landlord's standard rules, regulations, policies and procedures, which may be revised from time to time.
4. **Signs.** No signs, advertisements, or notices shall be painted or affixed to windows, doors or other parts of the Building, except those of such color, size, style and in such places as are first approved in writing by Landlord. All tenant identification and suite numbers at the entrance to the Premises shall be installed by Landlord, at Tenant's cost and expense, using the standard graphics for the Building. Except in connection with the hanging of lightweight pictures and wall decorations, no nails, hooks or screws shall be inserted into any part of the Building except by maintenance personnel.
5. **Access to the Building.** Tenants have access to the building 24 hours a day, 7 days a week provided that the Facility Manager is only available Monday through Friday from 8am to 5pm, excluding holidays (“Operating Hours”). In the event of an emergency, Tenant should contact the Facility Manager or the after-hours phone line.
6. **Keys to Main Entrance.** A key or a key card to the entry doors of the Building shall be furnished by Landlord to Tenant at the beginning of occupancy, Tenant shall not make any duplicate keys or key cards. All keys/key cards shall be returned to Landlord at the expiration or early termination of the Lease. Lost or stolen keys/key cards shall be promptly reported to Facility Manager. The tenant will be solely responsible for the cost of replacing any lost, stolen, or damaged keys/key cards and for rekeying the Facility and issuing new keys to other tenants.
7. **Keys to Leased Space.** Tenant is responsible for installing locks on any premises exclusively leased to the Tenant. Tenant will provide a copy of the key(s) to the Landlord.
8. **Right to Enter.** Landlord and persons authorized by Landlord may enter the Building at all reasonable times upon reasonable advance notice (except in the case of an emergency in which case no prior notice is necessary) for the purpose of inspections, repairs, alterations to adjoining space, appraisals, or other reasonable purposes; including enforcement of Landlord’s rights under this Lease. Landlord also shall have the right to enter the Premises at all reasonable times

## El Paso Makes: Innovation Factory Policy

after giving prior oral notice to Tenant, to exhibit the Premises to any prospective Tenant or other persons as reasonably determined by Landlord.

9. **Telecommunications.** Tenant shall not use more than its proportionate share of telephone lines and other telecommunication facilities available to service the building. If a tenant requires access to the IT/Electrical room, then the Tenant will notify the Facility Manager and the Facility Manager will provide access to the IT/Electrical room. Tenant will permanently label all of their connections by clearly identifying what the connection is for and the name of the tenant. Tenant will not tamper with another tenant's connections.
10. **Electrical System Capacity.** Tenant shall not install, operate or maintain in the Premises or in any other area of the Building, electrical equipment that would overload the electrical system beyond its capacity for proper, efficient and safe operation as determined solely by Landlord.
11. **Temperature.** The Innovation Factory will be kept at a temperature of 72 degrees Fahrenheit during Operating Hours. Tenants are prohibited from tampering with any thermostats.
12. **Heating and Cooling Devices.** Tenant shall not furnish cooling or heating to the Premises, including, without limitation, the use of electronic or gas heating devices, without Landlord's prior written consent
13. **Trash.** Landlord will provide trash receptacles for the proper disposal of non-hazardous trash and garbage. Tenant will use the designated receptacles. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner, on or about the Premises shall not be permitted. Tenant will not dispose of hazardous materials in the receptacles provided. Tenant will be responsible for the disposal of any hazardous materials in accordance with applicable laws. Tenant shall not throw away excess food or beverages in trashcans located in the offices to prevent smells within the work environment. Instead, Tenant shall deposit them in the trash cans located in the break rooms.
14. **Deliveries.** Deliveries of furniture, office equipment, or material to and from the Premises shall be made only at the times, in the areas and through the entrances and exits designated by Landlord. Tenant shall not make deliveries to or from the Premises in a manner that might interfere with the use by any other tenant of its premises or of the Common Areas, any pedestrian use, or any use which is inconsistent with good business practice.
15. **Parking.** Unassigned parking at a dedicated zone will be available for tenants and tenant's guests.
16. **Office Occupancy.** No more than 2 persons may occupy a single office.
17. **Makerspace Use.** Tenant will use makerspaces for manufacturing only. No office use will be allowed in makerspace areas. No storage of materials of any kind is allowed in makerspace areas.
18. **Storage Use.** Tenant will use the storage rooms for the storage of manufacturing materials. No storage of manufacturing materials is allowed in the maker spaces, offices, parking lot, or any other area in the Innovation Factory or outside.
19. **Conference Rooms.** Conference rooms must be booked in advance through Facility Manager.

## El Paso Makes: Innovation Factory Policy

20. **Break Rooms.** Tenant shall not leave any unwashed dishes or utensils in the break rooms. Tenant will store dishes, utensils, food and beverages in the appropriate areas in the break room. Labeling food & beverage items stored in the pantry and fridges is highly recommended. Ensure food and beverages stored are properly packaged. Fridges will be cleared every Friday.
21. **Hazardous Materials.** All use and storage of hazardous materials must comply with all environmental laws. Tenant will only store hazardous materials in a storage space and can only store materials disclosed in application. A list of hazardous materials will be updated by the tenant and provided to Facility Manager every 6 months. Tenant shall immediately report any spills of hazardous material to Facility Manager. Tenant remains responsible for the proper cleaning of hazardous materials spills in accordance to applicable environmental laws.
22. **Guests.** Tenant must be present while Tenant's guest is invited to visit the space. No other individual other than those stated on the Lease are allowed to utilize a key to the Building's entry doors. Tenant will not be allowed to have guests/individuals not authorized via the lease agreement to utilize any workspaces. Casual guests and visitors are not permitted outside of Regular Hours. Only Tenant's clients or professional contacts are welcome after Operating Hours. Children are allowed in the workplace on a case-by-case basis and must be accompanied by an adult at all times. Children under the age of fifteen are not allowed in the makerspace areas.
23. **Conduct.** Tenant shall not: (1) make or permit any improper, objectionable, or unpleasant noises or odors in the Building, or otherwise, interfere in any way with other Tenant or persons having business with them; (2) conduct or permit other activities in the Building that might, in Landlord's sole opinion, constitute a nuisance.
24. **Prohibited Conduct.** Tenant and Tenant's guests may not engage in criminal conduct, regardless of whether or where arrest or conviction occurs. Tenant and Tenant's guests may not behave in a loud or obnoxious manner; or disturb or threaten the rights, comfort, health, safety, or convenience of others (including our agents and employees) in or near the Innovation Factory. Theft or on-premise criminal acts of any nature will result in immediate termination of the agreement by the Landlord without a refund of the deposit. Vaping, smoking, drugs of any type, and alcoholic beverages are not permitted inside Innovation Factory.
25. **Animals.** No animals, except those assisting handicapped persons, shall be brought into the Building or kept in or about the Premises.
26. **Valuable Personal Items.** We recommend locking up items of value including but not limited to valuable personal items and technology items - laptop, charger, mouse, mouse pad, etc.
27. These regulations are designed and implemented to ensure that all tenants have a seamless, productive, and professional atmosphere to work in and thrive. Regulations may be edited or added as needed. Tenant will be afforded one warning. The tenant and users agree that the contravention of such regulations can result in immediate removal from leased premises and/or immediate termination of tenancy, without return of security deposit. Failure by a tenant to abide by these Regulations is grounds for termination of the tenant's lease.

**Innovation Factory Agreement**  
**301 George Perry Blvd., Suite E&F Room \_\_\_\_**

**El Paso International Airport**  
**El Paso, Texas**

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**TENANT**

**\_\_\_\_\_, 202**  
**Effective Date**

**INNOVATION FACTORY AGREEMENT  
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**ATTACHMENTS:**

EXHIBIT “A” -Leased Premises

EXHIBIT “B” - Tenant Improvements

EXHIBIT “C” – Building Regulations

**EL PASO INTERNATIONAL AIRPORT**  
**INNOVATION FACTORY AGREEMENT**

**THIS INNOVATION FACTORY AGREEMENT**, (“Agreement” or “Lease”), entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, between the **CITY OF EL PASO, TEXAS** (“Landlord”) and \_\_\_\_\_, a \_\_\_\_\_ (“Tenant”).

**WITNESSETH:**

**WHEREAS**, the Municipal Airports Act of the State of Texas (Chapter 22 of the Texas Transportation Code) authorizes municipal airports, as governmental entities, to establish the terms and fix the charges, rentals, or fees for the privileges or services. The charges, rentals, and fees must be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the local government;

**WHEREAS**, Landlord owns and operates the El Paso International Airport as depicted in the Airport Layout Plan \_\_\_\_\_ (“Airport”) located in the County of El Paso, Texas;

**WHEREAS**, Landlord has constructed an Innovation Factory and facilities located on the Airport and has space and facilities available for lease, and Tenant desires to lease space in the Innovation Factory;

**WHEREAS**, Tenant has indicated a willingness and ability to properly operate, keep and maintain the portion of the Innovation Factory that it leases in accordance with the standards established by Landlord; and

**WHEREAS**, in furtherance of its authority, Landlord further desires to lease to Tenant certain facilities located at said Airport in accordance with the terms, covenants, and conditions set forth in this Agreement;

**WHEREAS**, the Landlord has adopted the El Paso Makes: Innovation Factory Incentive and Lease Policy (the “Policy”) to assist small businesses negatively impacted by COVID-19 and to promote the growth and development of startups engaged in the advanced manufacturing, aerospace, and defense manufacturing sectors;

**WHEREAS**, this lease is granted and structured in accordance to the Policy.

**NOW THEREFORE**, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties agree as follows:



**ARTICLE I**  
**PREMISES AND PRIVILEGES**

**Section 1.01 Description of Premises Demised**

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Landlord does hereby demise and lease to Tenant and Tenant does hereby lease from Landlord the following described Premises located in El Paso County, Texas, as follows:

- A. That certain office and warehouse space containing approximately \_\_\_\_\_ square feet, more or less, in total, as shown on Exhibit “A” attached hereto and incorporated herein by reference, and also known as Innovation Factory, 301 George Perry Blvd., Suite \_\_, for Tenant's exclusive use:

Suite __	_____ square feet of office space _____ square feet of maker space _____ square feet of storage space _____ square feet total
	_____

(All square footage figures are approximate)

all of which will hereinafter be referred to as the “Premises” or “Leased Premises”.

**Section 1.02 Right of Ingress and Egress**

Landlord hereby grants to Tenant the rights of ingress to and egress from the Premises over and across the public roadways serving the Airport for Tenant, its agents and servants, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the Airport.

In addition, the tenant will have the right to use up to \_\_\_\_ parking spaces located directly in front of the Leased premises. The right to use the parking spaces is non-exclusive and will be shared with other tenants on a first come first serve basis.

**Section 1.03 Restrictions of Privileges, Uses and Rights**

Tenant covenants and agrees that it shall use the Premises and common areas as provided in this Lease and the Innovation Factory Regulations (“Regulations”) posted on the City website, as updated from time to time in the discretion of the Landlord. For reference purposes the Regulations in effect as of the Effective Date of this Lease are attached to this Lease as Exhibit “C” provided that the Landlord reserves the right to update such regulations at any time, in the Landlord’s sole discretion, by posting the updated versions in the City website. No notification is required from the Landlord to the Tenant to update the Regulations. Updated Regulations become effective as of the date of the website posting. Tenant will abide by all updates to the Regulations.

Tenant shall not offer, or permit to be offered, retail services or sales. In connection with the exercise of its rights under this Agreement, Tenant:

- A. Shall not do, or permit to be done, anything at or about the Airport or the Premises that may interfere with the effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, security system, fire hydrants and hoses, electrical system, natural gas, or other Airport systems installed or located on or within the Premises or the Airport.
- B. Shall not do, or permit to be done, any act or thing upon the Airport or the Premises that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.
- C. Shall not dispose of, or permit any employee, agent, contractor, or other person to dispose of, any waste material taken from, or products used with respect to, its aircraft or operations into the sanitary or storm sewers at the Airport or any other location on the Airport (whether liquid or solid), including but not limited to Hazardous Materials, unless such waste material or products first be properly treated by equipment installed with the prior written approval of Landlord and all other administrative bodies having appropriate jurisdiction or may remain untreated if wastewater guidelines limitations of the El Paso Water Utilities/Public Service Board are not exceeded.
- D. Shall not keep or store hazardous articles and materials including, without limitation, flammable liquids and solids, corrosive liquids, compressed gasses, and magnetized or radioactive materials on the Airport except when all of the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any such liquids having a flash point of less than one hundred degrees (100<sup>0</sup>) Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said material shall be under the control and care of designated Tenant personnel; (3) said material shall be packaged and handled in compliance with applicable U. S. Department of Transportation, Environmental Protection Agency, or other such applicable regulations for transport and pre-transport of hazardous articles and materials; and (4) storage of hazardous materials shall comply with applicable federal, state, and local laws and regulations including, without limitation, building and fire code provisions. "Director" shall mean the Director of Aviation of the El Paso International Airport or other authorized representative of Landlord.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any vehicle at the Airport without prior written approval of Landlord, said approval to be at Landlord's sole discretion.
- F. Shall not maintain or operate on the Premises or elsewhere at the Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or

beverages to the public or to its employees; nor shall Tenant in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Tenant may provide vending machines solely for the sale of hot and cold beverages, food, and confections to Tenant's employees in areas not accessible to the general public.

#### **Section 1.04 Conditions of Granting Agreement**

The granting of this Agreement and its acceptance by Tenant are conditioned upon the following covenants:

- A. No functional alteration of the Premises shown on Exhibit "A" or functional change in the uses of the Premises shall be made without the specific written consent of Landlord; said consent to be at Landlord's sole reasonable discretion, which shall not be unreasonably withheld, conditioned, or delayed.
- B. The right to use public Airport facilities in common with others authorized to do so shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated under their authority with reference to aviation and air navigation; and all applicable rules, regulations and ordinances of Landlord now in force or hereafter prescribed or promulgated by charter authority or by law.
- C. Tenant will utilize only the roadways, taxiways, or other direction, path, route, or form of travel Landlord may designate, from time to time, for Tenant's operation and movement on or about the Airport.

### **ARTICLE II** **OBLIGATIONS AND RIGHTS OF LANDLORD**

#### **Section 2.01 Quiet Enjoyment**

Landlord agrees that upon Tenant's paying rent and performing all of the covenants, conditions, and agreements herein set forth, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised for the term of this Agreement.

#### **Section 2.02 Landlord's Right of Entry**

Landlord and persons authorized by Landlord may enter the Premises at all reasonable times upon reasonable advance notice (except in the case of an emergency in which case no prior notice is necessary) for the purpose of inspections, repairs, alterations to adjoining space, appraisals, or other reasonable purposes; including enforcement of Landlord's rights under this Lease. Landlord also shall have the right to enter the Premises at all reasonable times after giving prior oral notice to Tenant, to exhibit the Premises to any prospective tenants or other persons as reasonably determined by the Landlord.

#### **Section 2.03 Condition and Maintenance of Premises.**

Landlord shall bear responsibility for the repair, maintenance and replacement of the mechanical systems of the Premises, including but not limited to, electrical, the plumbing system including replacement of major lines, the life-safety systems and the HVAC systems. Landlord shall bear responsibility for the repair, maintenance and replacement of the Structural Elements of the Premises, except for any damage caused by the act or omission of the Tenant, or any agent, employee, invitee, contractor, servant, or subtenant of Tenant, for which damage Tenant shall be responsible. "Structural Elements" shall mean the roof, foundation, load bearing columns and walls, exterior walls, exterior paint, common vehicle parking areas, and the aircraft parking apron.

**Section 2.04 Intentionally Deleted.**

**ARTICLE III**  
**OBLIGATIONS OF THE PARTIES**

**Section 3.01 Condition and Maintenance of Premises**

**Except as otherwise provided in this Lease, TENANT ACCEPTS THE PREMISES IN "AS IS" CONDITION.** The Landlord makes no representations regarding the suitability of the Premises for any uses by the Tenant.

**Section 3.02 Internal Improvements.**

- A. General. Tenant will not make any alterations or improvements to the Premises without prior written approval of the Director or designee. Approval for improvements remains at the sole discretion of the Director or designee and may be conditioned or denied for any or no reason.
- B. Unapproved Improvement Default. In the event of such alteration, erection, placement, or maintenance without approval, Tenant will be considered in default of this Agreement and Landlord may terminate this Agreement in accordance with the provisions set forth in this Lease. In addition to termination, Tenant will be responsible for the costs incurred by the Landlord for removing any unauthorized improvements and/or the costs of restoring the Premises to its prior condition.
- C. Title to Improvements. All Leasehold Improvements made to the Premises by Tenant, shall be and remain the property of Tenant until the termination of this Agreement whether by expiration of the term, cancellation, forfeiture or otherwise. Upon the termination of this Agreement, whether by expiration, cancellation, or otherwise, title to such Leasehold Improvements shall vest in accordance with the Paragraph below.
- D. Permanent Improvements. All permanent Leasehold Improvements, if any, made by Tenant to the Air Cargo Center, of which the Premises are a part, shall become the property of Landlord upon the expiration, cancellation or early termination of this Agreement; provided, however, that at Landlord's sole discretion, Tenant shall remove all permanent improvements and restore the Premises to the condition existing as of the effective date of this Lease provided that Landlord informs Tenant, in writing, at the time of granting approval that Landlord wants those improvements removed. All improvements other than

permanent improvements and all fixtures of a non-permanent nature and all trade fixtures, machinery and equipment made or installed by Tenant may be removed from the Premises at any time by Tenant, subject to Landlord's lawful exercise of its landlord's lien, and to the extent that it does not cause structural or cosmetic damage to the Premises or any other portion of Landlord's Air Cargo Center and facilities.

- E. Tenant Improvements. The Tenant acknowledges that the Tenant needs certain tenant improvements to be performed to the Leased Premises in order for the Tenant to be able to move in and operate at the Leased Premises. The Landlord will construct the improvements described in Exhibit B at the request of the Tenant and at the tenant's sole expense. The Tenant will be responsible for the costs of the tenant improvements which costs are estimated at \$ \_\_\_\_\_ ("Estimated Improvement Costs"). The Tenant will pay the Estimated Improvement Costs within 30 calendar days of the Effective Date of this Lease. If the Estimated Improvement Costs are less than the actual improvement costs, then the Tenant will be responsible for paying the difference. In the event that a refund is warranted, the Tenant will not be entitled to the refund but rather the Landlord will refund the funds directly to the Landlord's Economic Development Department ("ED Department") where the funds will be reallocated to other tenants or applicants in accordance with the Policy and at the ED Department's sole discretion.

### **Section 3.03 Compliance with Laws**

Tenant, at Tenant's expense, agrees that in the event it constructs, operates and/or maintains improvements on the Premises, such activities shall be done in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Landlord or Tenant, with respect to the use, occupation or alteration of the Premises and any improvements thereon. By way of example and not in limitation of the foregoing, the execution of this Lease and approval of Tenant's plans by the Airport shall not preclude the requirement that Tenant obtain all other approvals necessary for development of Tenant's project such as, but not limited to, building permits and certificates of occupancy.

Tenant, at Tenant's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Tenant shall, at Tenant's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's use, operation, occupation or alteration of the Premises including any improvements thereon.

#### **A. Definitions.**

1. “Environmental Laws” means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
2. “Hazardous Material” shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
3. “Release” shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

1. Tenant shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law; provided, further, that with respect to demolition of Existing Improvements, Tenant shall comply fully with all regulatory requirements, including, but not limited to, those governing asbestos abatement. **Tenant shall indemnify, defend and hold harmless Landlord, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related**

**to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Tenant's obligations and liabilities under this paragraph shall continue so long as Landlord bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon.**

This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises.

2. The parties agree that Landlord's right to enforce Tenant's promise to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section. Landlord shall also have all other rights and remedies provided by law or otherwise provided in this Agreement.
3. Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Tenant results in any contamination of the Premises or any improvements thereon, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
4. Tenant shall, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties, which is related to environmental contamination.
5. Tenant shall immediately notify Landlord of any of the following: (a) any correspondence or communication from any governmental entity regarding

the application of Environmental Laws to the Premises or Tenant's operation on the Premises, and (b) any change in Tenant's operation on the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under the Environmental Laws.

6. Intentionally omitted.
7. Nothing in Section 3.03 will make Tenant liable or responsible for, and Tenant shall have no obligations related to any hazardous materials which (i) existed on, under or about the Premises prior Tenant's occupation under this Agreement or any previous lease Agreement with Landlord for the Premises, (ii) which migrate to the Premises from off-site, or (iii) are introduced to the Premises during Landlord or its employees, agents or contractors, or any other person or entity except to the extent caused by Tenant or its employees, agents, contractors or Air carriers.
8. Landlord shall use commercially reasonable efforts to cause its other tenants in the Air Cargo Center to comply with all Environmental Laws.

C. Reporting.

1. At any time that Tenant submits any filing pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration (FAA), the Environmental Protection Agency (EPA) or the Texas Commission on Environmental Quality (TCEQ), Tenant shall provide duplicate copies of the filing(s) and all related documents to Landlord.
2. Within ninety (90) days after expiration, termination or cessation of this Lease for any reason, Tenant shall provide a current Phase I environmental site assessment of the Premises prepared in accordance with recognized industry standards; and if, in the opinion of Landlord and based on report findings, the Premises shall require environmental remediation, Tenant shall perform same to return the Premises into a condition equal or better to that as of the effective date of the Lease. Landlord shall provide Tenant access to the Premises as needed in order for Tenant to comply with its obligations pursuant to this Section 3.05(C)(2).

**Section 3.04 Utilities**

Landlord will provide: Internet access, water, sewer gas, electricity used by the Tenant on the Premises during the term of this Lease.



### **Section 3.05 Trash, Garbage, and Other Refuse**

Landlord shall provide proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all non-hazardous trash, garbage and other refuse. Tenant will not dispose of hazardous materials in the receptacles provided. Tenant will be responsible for the disposal of any hazardous materials in accordance to applicable laws.

### **Section 3.06 Permitted Uses**

Tenant covenants and agrees that in no event will it enter into any business activity on the Premises other than those specified in the Regulations.

### **Section 3.07 Approval of Plans**

Approval of any and all improvements, plans, signs, or documents by the Director does not constitute approval of the City or any other local, state, or federal agency. It is specifically understood that the Department of Aviation is only one of numerous departments of the City and that, in addition to obtaining approval of the Director, Tenant shall be required to obtain the approval of other departments as well.

### **Section 3.08 Authorization to Enter Restricted Area**

Tenant understands that all of its agents, employees, servants or independent contractors must be authorized by Landlord to enter restricted areas as defined in Title 14 of the El Paso City Code as amended. Tenant understands that no person authorized to enter a restricted area by virtue of this Agreement may permit any person who is not otherwise authorized to enter a restricted area unless such person is, at all times while in the restricted area, in the company of an authorized person.

### **Section 3.09 Security**

Tenant is familiar with the restrictions imposed on Landlord by 49 CFR Part 1540 and 1542 as amended and agrees to assume responsibility for compliance with said regulations as they relate to access and identification procedures on the Premises. Tenant recognizes that all persons in or on the Premises must comply with federal safety and security requirements.

### **Section 3.10 Penalties Assessed by Federal Government**

Tenant understands and agrees that in the event any federal agency assesses a civil penalty against Landlord for any violation of a federal rule or regulation as a result of any act on part of Tenant, its agents, servants, employees, invitees, or independent contractors, Tenant will, upon invoice, promptly reimburse Landlord in the amount of the civil penalty assessed. Failure to reimburse Landlord within thirty (30) days of receipt of written notice shall be an event of default hereunder.

## **ARTICLE IV TERM OF LEASEHOLD**

### **Section 4.01 Term**

The “Term” of this Lease will be the Initial Term and any properly exercised Option Period, as provided below. This Lease shall be for an initial term of \_\_\_\_ (\_\_) years (“Initial Term”), commencing on \_\_\_\_\_, 20\_\_ (“Effective Date”).

### **Section 4.02 Option to Extend**

In the event that Tenant is not in default of any terms of this Lease beyond any applicable notice and cure period, Tenant shall have the option to extend this Lease for \_\_\_\_ (\_\_) additional term of \_\_\_\_ (\_\_) years each. Tenant may exercise the option (“Option Period”) by notifying Landlord in writing in not more than one hundred twenty (120) days and not less than ninety (90) days prior to the expiration of the Initial Term. In the event Tenant exercises its option, the Lease shall be extended on the same terms and conditions, except that Rental shall be readjusted as noted in Article V below.

### **Section 4.03 Holding Over**

It is agreed and understood that any holding over by Tenant of the Premises at the expiration or cancellation of this Agreement shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1.5) times the then current monthly rental, unless the hold over is caused by the City staff not placing a new agreement with Tenant regarding the Premises at the end of the term of the present Lease on the City Council Agenda on a timely basis in which case the current monthly rental rate shall continue until the new agreement is executed. No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

### **Section 4.04 National Emergency**

In the event that the rights and privileges hereunder are suspended by reason of war or other national emergency, the parties will negotiate in good faith a reasonable resolution of this lease under the circumstances.

## **ARTICLE V RENTALS**

### **Section 5.01 Rental**

For the purpose of computing the rental payments of this Lease, Landlord and Tenant agree that the Premises comprise the following:

Maker Space: _____	_____ square feet total at <u>\$ _____ per square foot per annum</u> \$ _____ per annum
Office Space: _____	_____ square feet total at <u>\$ _____ per square foot per annum</u> \$ _____ per annum
Storage Space: _____	_____ square feet total at <u>\$ _____ per square foot per annum</u> \$ _____ per annum
Parking Space	_____ square feet total at <u>\$ _____ per square foot per annum</u> \$ _____ per annum

The annual rental for the Initial Term shall be \$ \_\_\_\_\_ per year payable in advanced starting on the Effective Date and subsequent payments due at the beginning of each anniversary date of the Effective Date.

## Section 5.02 Expenses

In addition to the Rental, the Tenant will be responsible for operation and maintenance expenses of the Leased Premises, which may include those listed in Section 2.03 as necessary (the “Expense Amount”). The Expense Amount for the First year of this Lease is \$ \_\_\_\_\_. The Tenant will pay the Expense Amount per year payable in advanced starting on the Effective Date and subsequent payments due at the beginning of each anniversary date of the Effective Date. The Landlord will perform a reconciliation report of the expenses at the end of every calendar year. The Tenant will be responsible for any expenses that exceed the Expense Amount. If the expenses are less than the Expense Amount, then the Landlord will credit to the Tenant any over payments. The Tenant will not receive any actual refund of overpayments of expenses. All overpayments will be credited against amounts owed to the Landlord under this Lease. Following the reconciliation every calendar year, the Landlord will establish a new Expense Amount and will notify the Tenant of the new Expense Amount. The Tenant will pay the new Expense Amount within 30 calendar days of notification by the Landlord. In the event that a refund is warranted, the Tenant will not be entitled to the refund but rather the Landlord will refund the funds directly to the Landlord’s Economic Development Department (“ED Department) where the funds will be reallocated to other tenants or applicants in accordance with the Policy and at the ED Department’s sole discretion.

### **Section 5.03 Unpaid Rent, Fees and Charges**

Any installment of rent, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the 30th day of the month in which payment is due, shall bear interest at the rate of 12% per annum.

### **Section 5.04 Time of Payment**

All rental due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Agreement, except as otherwise provided in Section 5.02 above.

### **Section 5.05 Place of Payment**

All payments provided herein shall be paid to Landlord at the following address:

Accounting Division  
El Paso International Airport  
P.O. Box 971278  
El Paso, Texas 79997-1278.

## **ARTICLE VI** **DAMAGE OR DESTRUCTION OF PREMISES**

### **Section 6.01 Damage or Destruction**

If the Premises or any portions thereof, or structures of which such space may be a part, be damaged by fire or other casualty not caused by Tenant, Director shall notify Tenant within sixty (60) days whether the space shall be repaired. If the space is to be repaired, it shall be repaired with due diligence by Landlord, and the rental allocable to the Premises rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs, provided that Landlord will exert its best effort to provide Tenant with temporary substitute space, if available, at such rent as deemed necessary and reasonable by City, until such time as the repairs are completed.

If Director shall fail to notify Tenant of its decision to repair any untenable Premises within sixty (60) days after the destruction, Landlord will be deemed to have elected to terminate this Agreement as to the space damaged and destroyed, and the Agreement shall automatically terminate as to such space as of the date of the damage or destruction.

### **Section 6.02 Damage Caused by Tenant**

Notwithstanding the provisions of this Article 6, in the event that due to the negligence or willful act or omission of Tenant, its employees, its agents, or licensees, Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Premises. To the extent that the costs of repair or replacement shall exceed the amount of any insurance proceeds payable to Landlord by reason of such damage or destruction, Tenant shall pay the amount of such additional costs to Landlord.

## **ARTICLE VII**

### **INSURANCE AND INDEMNIFICATION**

#### **Section 7.01 Liability Insurance**

Tenant shall obtain and maintain for the term of this Lease, Commercial General Liability Insurance, including contractual liability, in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, property damage and personal liability,

Landlord shall be named as an Additional Insured on all insurance policies, either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the Landlord or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

#### **Section 7.02 Commercial Renter's Insurance**

**Tenant will maintain, throughout the term of the Lease Commercial Renter's Insurance.**

#### **Section 7.03 Environmental Insurance**

Tenant agrees that, at all times throughout the term of this Agreement, it will keep Three Million Dollars (\$3,000,000.00) for Pollution Liability insurance arising out of each occurrence, which insurance shall cover, at a minimum, bodily injury, property damage, including natural resource damage, loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, removal, storage, disposal, and or use of the pollutant, and defense costs, including costs and expenses incurred in the investigation, defense, or settlement of claims covering the Premises and surrounding Landlord property or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

#### **Section 7.04 Indemnification**

**WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S ACTIVITIES ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF TENANT OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING**

**CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LANDLORD. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON RECEIPT OF WRITTEN NOTICE FROM LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LANDLORD. THE OBLIGATIONS OF TENANT UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THE LEASE.**

**Section 7.05 Additional Expenses**

The Tenant acknowledges that the expenses under this Section are not included as expenses covered by the Expense Amount and that the Tenant is responsible for these expenses under this Section in addition to the Rental Amount and Expense Amount.

**ARTICLE VIII**  
**CONDEMNATION**

**Section 8.01 Definition**

The following definitions apply in construing the provisions of this Agreement relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. “Taking” means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending.
- B. “Total taking” means the taking of the fee title to all of the Premises and improvements thereon.
- C. “Substantial taking” means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
  - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Tenant;
  - 2. The conduct of Tenant's business on the Premises would be substantially prevented or impaired; or
  - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after

performance of all covenants and conditions required of Tenant under this Agreement.

- D. “Partial taking” means the taking of a fee title that is not either a total or substantial taking.
- E. “Improvements” includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. “Notice of intended taking” means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Agreement. The notice is considered to have been received when a party to this Agreement receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. “Award” means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. “Date of taking” means the date that Tenant is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

#### **Section 8.02 Notice of Condemnation**

The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

#### **Section 8.03 Rights of Parties during Condemnation Proceeding**

Landlord and Tenant shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Agreement relating to the condemnation.

#### **Section 8.04 Taking of Leasehold**

Upon a total taking, Tenant's obligation to pay rent and other charges hereunder together with Tenant's interest in the leasehold shall terminate on the Date of Taking. Upon a substantial taking, Tenant may, by notice to Landlord within ninety (90) days after Tenant receives notice of the intended taking, elect to treat the taking as a total taking. If Tenant does not so notify Landlord, the taking shall be deemed a partial taking. Upon a partial taking, this Agreement shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

#### **Section 8.05 Total Taking**

All of Tenant's obligations under the Agreement shall terminate as of the Date of Taking. Upon a total taking, all sums awarded for any Tenant-owned improvements and the leasehold estate shall be disbursed to Tenant. All sums awarded for the Premises, as unencumbered by the Tenant-owned improvements, but subject to the Agreement, shall be disbursed to Landlord.

#### **Section 8.06 Partial Taking**

Upon a partial taking, all awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Landlord and Tenant as follows: Tenant shall receive all sums awarded for Tenant-owned improvements and the Leasehold estate. Landlord shall receive all sums awarded for the Premises as unencumbered by the improvements but subject to the Agreement.

#### **Section 8.07 Obligations of Tenant under Partial Taking**

Promptly after any such partial taking, Tenant, at its expense and in accordance with any awards disbursed in accordance with Section 706, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the initial term or any renewal term, Tenant shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Landlord of its intention to that effect.

#### **Section 8.08 Taking of Temporary Use of Premises and Improvements**

Upon any taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Tenant shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Tenant shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the



Premises and improvements from all liens or claims arising therefrom, Tenant shall be entitled to any surplus and shall be liable for any deficiency.

If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

## **ARTICLE IX** **ENCUMBRANCES**

**INTENTIONALLY DELETED**

## **ARTICLE X** **EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

### **Section 10.01 Expiration**

This Agreement shall expire at the end of the term or any extension thereof.

### **Section 10.02 Cancellation**

Subject to the provisions of Article IX above, this Agreement shall be subject to cancellation by Landlord in the event Tenant shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Landlord has notified Tenant in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Tenant's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises while rent is in arrears;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Tenant, and such default continues for a period of thirty (30) days after receipt of written notice from Landlord to cure such default, unless during such thirty-day period, Tenant shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings;
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Tenant where such receivership is not vacated within sixty (60) days after the appointment of such receiver; or

In any of the aforesaid events, Landlord may take immediate possession of the Premises including any and all improvements thereon and remove Tenant's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Landlord to declare this Agreement canceled upon the default of Tenant for any of the reasons set out shall not operate to bar or destroy the right of Landlord to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the term of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

#### **Section 10.03 Repossessing and Reletting**

In the event of default by Tenant hereunder which shall remain uncured after the required notices have been given pursuant to this Agreement, and for such time as provided herein, Landlord may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Tenant and all personal property of Tenant (which property may be removed and stored at the cost of and for the account of Tenant), using such force as may be necessary; and
- B. Either cancel this Agreement by notice or without canceling this Agreement, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Landlord. If Landlord shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Tenant during such month or part thereof under the terms of this Agreement, Tenant shall pay such deficiency to Landlord immediately upon calculation thereof, providing Landlord has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within thirty (30) days after receipt of notice of deficiency.

#### **Section 10.04 Assignment and Transfer**

Tenant is not permitted to assign this Agreement without first obtaining Landlord's written consent; said consent shall not be unreasonably withheld, conditioned or delayed. The foregoing notwithstanding, any person or entity to which this Agreement is assigned to, pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Agreement on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

### **Section 10.05 Subleasing**

(a) Tenant shall not sublease all or any part of the Premises.

### **Section 10.06 Cancellation at Landlord's discretion**

The Landlord may cancel this Lease following a 30 calendar day written notice, if the Landlord determines, in its sole discretion, that this lease must be canceled for any of the following reasons: (1) to allow the Landlord to comply with any Federal Aviation Administration or other federal or state agency requirements, (2) the Landlord requires the Premises for aeronautical purposes, (3) the Landlord requires the Premises for any other municipal or airport purposes in the sole discretion of the Landlord, or (4) termination of the Policy and the incentive program established under the Policy.

### **10.07 Cancellation for failure to comply with requirements**

If the tenant fails to comply with the requirements of the policy, this lease agreement, or the grant agreement following notice and a 30 calendar day opportunity to cure, then the City may cancel any or all agreements with the tenant, at the landlord's sole discretion, and the tenant will be responsible for repaying any funds granted under the grant agreement and responsible for any amounts under the lease agreement.

### **10.08 Cancellation by Tenant**

Tenant may cancel the lease agreement and grant agreement upon 90 calendar day written notice if the tenant is unable to continue its business operations in accordance to the application approved for grant funds. The notice provided by the tenant must explain the reasons the tenant is unable to continue to operate its business as provided in the application approved for the grant funds. Upon receipt of notification the City may immediately reallocate any funds approved for the tenant.

### **10.09 Liquidated damages in event of cancellation**

In the event that either party cancels the lease agreement, the pre-paid Rent and Expenses shall be used as liquidated damages by landlord.

## **ARTICLE XI GENERAL PROVISIONS**

### **Section 11.01 Right of Flight**

Landlord reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Landlord reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at El Paso International Airport which would constitute an obstruction to air

navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Landlord reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

**Section 11.02 Time Is of the Essence**

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

**Section 11.03 Notices**

All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LANDLORD: Director of Aviation  
El Paso International Airport  
6701 Convair Road  
El Paso, Texas 79925-1091

TENANT:

With copy to: The City of El Paso  
Attn: Economic and International Development Department  
P.O. Box 1890  
El Paso, Texas 79950-1890

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

**Section 11.04 Attorney's Fees**

If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

### **Section 11.05 Agreement Made in Texas**

The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

### **Section 11.06 General Civil Rights Provision**

Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### **Section 11.07 Compliance with Nondiscrimination Requirements**

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 11.08 hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Lessor (for purposes of this Section 11.08 hereinafter referred to as the “sponsor”) or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where

any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **Section 11.08 Affirmative Action**

Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

#### **Section 11.09 FAA Order 1400.11**

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. Tenant for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the

event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in Pertinent List of Nondiscrimination Authorities (Federal Aviation Administration Order 1400.11, Appendix 4) as same may be amended from time to time (the “Acts and Regulations”) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. The Tenant for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the listed acts and authorities appearing in the Acts and Regulations.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this Lease, Tenant for itself, its assignees, and successors in interest, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose

property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 USC 1681 *et seq.*).

B. In the event of breach of any of the covenants in this section 3, Landlord shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]



#### **Section 11.10 Cumulative Rights and Remedies**

All rights and remedies of Landlord here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Landlord of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

#### **Section 11.11 Interpretation**

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

#### **Section 11.12 Agreement Made in Writing**

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

#### **Section 11.13 Paragraph Headings**

The Table of Contents of this Agreement and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

#### **Section 11.14 Severability**

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

#### **Section 11.15 Successors and Assigns**

All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Landlord and Tenant and their successors, assigns, legal representatives, heirs, executors and administrators.

#### **Section 11.16 Taxes and Other Charges**

Tenant shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Tenant or Landlord, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Tenant's use and/or occupancy of the Premises, during the term of this Agreement including any extensions or option periods granted thereto. Tenant in good faith may contest any tax or governmental charge; provided that Tenant may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom. The Tenant acknowledges that taxes under this Section are not included as expenses covered by the Expense Amount and that the Tenant is responsible for these expenses under this Section in addition to the Rental Amount and Expense Amount. The Tenant will provide the Landlord written proof of payment of all taxes owed no later than March 30 of each calendar year. In the event that the Central Appraisal District issues a single property/improvement tax bill

for the Innovation Factory, the Landlord will prorate such taxes and send an invoice to the Tenant for the Tenant's share of the taxes. The Tenant will pay the Landlord the amount in the invoice within 30 calendar days of receipt of the invoice. The tenant remains responsible for any other taxes on equipment, personal property and/or inventory and will provide proof of payment to the Landlord as provided in this Section.

#### **Section 11.17 Waiver of Warranty of Suitability**

**LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. Except as otherwise provided in this Lease, TENANT LEASES THE PREMISES AS-IS AND LANDLORD DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO TENANT'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE.**

#### **Section 11.18 Waiver of Reliance and Assumption of Risk**

**TENANT AGREES THAT IT HAS NOT RELIED UPON ANY STATEMENTS MADE BY LANDLORD WHETHER ORAL AND/OR WRITTEN, EXPRESS OR IMPLICIT, NOR ANY OTHER REPRESENTATIONS OF LANDLORD, ITS EMPLOYEES, AGENTS, REPRESENTATIVE, AND CONTRACTORS SIGNING THIS AGREEMENT. TENANT HAS RELIED SOLELY ON ITS OWN INDEPENDENT INVESTIGATIONS AND ANALYSIS AND ON THE OPINIONS OF ITS ATTORNEYS, AGENTS, AND CONTRACTORS IN ENTERING INTO THE LEASE. TENANT HEREBY WAIVES ANY AND ALL RIGHT, WHICH TENANT MAY HAVE TO CLAIM ANY NATURE OF A LIEN OR TO WITHHOLD, ABATE, DEDUCT FROM OR OFFSET AGAINST RENT UNDER THE TEXAS PROPERTY CODE. LANDLORD HEREBY ACKNOWLEDGES THAT WITHOUT SUCH WAIVER, LANDLORD WOULD NOT ENTER INTO THIS LEASE.**

#### **Section 11.19 Survival of Certain Provisions**

All Provisions of this Agreement which expressly or impliedly contemplate or require performance after the expiration or termination of this Agreement hereunder shall survive such expiration or termination of this Agreement, including without limitation, Section 3.05.

#### **Section 11.20 Authorization to Enter Agreement**

If Tenant signs this Agreement as a corporation, Tenant warrants to Landlord that Tenant is a duly authorized and existing corporation, that Tenant is qualified to do business in the State of Texas, that Tenant has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant will provide evidence satisfactory to Landlord confirming these representations.

#### **Section 11.21 Complete Agreement**

This agreement, together with the attachment(s) attached hereto, constitutes the entire agreement among the parties relating to the terms and conditions of the agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this agreement confers no rights on any person or business entity that is not a party hereto. This

agreement shall not be construed against or unfavorably to any part because of such party's involvement in the preparation or drafting of this agreement.

***[Signatures begin on the following page]***

**IN WITNESS WHEREOF**, the parties have hereunto set their hands as of this \_\_\_\_ day of \_\_\_\_\_, 202 .

Samuel Rodriguez, P.E.  
Director of Aviation

**APPROVED AS TO CONTENT:**

Assistant City Attorney

**THE STATE OF TEXAS    )**

**COUNTY OF EL PASO     )**

Notary Public, State of Texas

My Commission Expires:

21-1003-1193/PL#1225244.5/Innovation Factory Template– Air Cargo Agreement/IRT

**TENANT'S SIGNATURE AND ACKNOWLEDGMENT**

**ATTEST:**

**TENANT:**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

**THE STATE OF** \_\_\_\_\_ )

**COUNTY OF** \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_ by \_\_\_\_\_, as \_\_\_\_\_ of (Tenant).

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

Exhibit “A”  
Leased Premises

Exhibit “B”  
Tenant Improvements

Exhibit “C”  
Building Regulations



THE STATE OF TEXAS    )  
  )  
  )  
COUNTY OF EL PASO    )  
  
  INNOVATION FACTORY  
  INCENTIVE AGREEMENT- ARPA

This Agreement (“**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the “**CITY**”, and the [NAME OF ENTITY], a [ENTITY TYPE AND STATE OF REGISTRY] (“**Applicant**” or “**Contractor**”).

**RECITALS**

**WHEREAS**, on May 9th 2022 the City Council appropriated ARPA funds to be used by the City in accordance with the requirements stipulated by the CSLFRF, ARPA and federal guidelines; and

**WHEREAS**, on August 1, 2022, the City Council approved a resolution for appropriation of \$3,000,000 of the grant funds from the Coronavirus State and Local Fiscal Recovery Funds, to assist impacted or disproportionately impacted small business in the manufacturing industry sector in accordance with the requirements stipulated by the American Rescue Plan Act (“ARPA”) and federal guidelines in the Final Rule to cover expenses incurred to respond and recover from the COVID-19 public health crisis; and

**WHEREAS**, such funding may be used to provide loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees and mortgage, rent, utility, and other operating costs; and technical assistance, counseling or other services to support business planning; and

**WHEREAS**, the Innovation Factory is owned by the City of El Paso (“COEP”) and managed by the El Paso International Airport (“EPIA”) and is built for the purpose of incubating advanced manufacturing startups and connecting them to aerospace and defense markets; and

**WHEREAS**, the CITY intends to provide the Applicant rental and buildout assistance at the Innovation Factory to further advance the Applicant’s “**Project**”, as further described in **Attachment “A”**.

**NOW, THEREFORE**, for the consideration set forth in this Agreement and its attachments, the CITY and Applicant agree as follows:

**ARTICLE I. ATTACHMENTS**

**1.1** The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

Attachment “A”	Project Description
Attachment “B”	Rent and Operation Expenses
Attachment “C”	Insurance Certificates / Certifications
Attachment “D”	Additional Terms & Conditions (ARPA)
Attachment “E”	Innovation Factory Policy
Attachment “F”	Lease

## ARTICLE II. PROJECT

**2.1** The CITY hereby agrees to provide rental and buildout assistance to the Applicant and the Applicant agrees to perform the operations contemplated in the Project. The Project shall consist of advanced manufacturing related to the Advanced Manufacturing as further described in **Attachment “A”**.

**2.2** Applicant acknowledges participation in the Innovation Factory is contingent upon providing transparent and accurate metrics as may be requested by the City in a timely manner. Due to the fact that ARPA funds must be allocated by year end 2024 and expended by year end 2026 time is of the essence in regard to any reporting requirements required to be provided by the Applicant to the City.

## ARTICLE III. FEES AND PROJECT BUDGET

**3.1 PAYMENT TO APPLICANT.** The City shall provide to EPIA for the benefit of the applicant a total amount not to exceed \$\_\_\_\_\_ and up to 100% subsidy of the rent and associated expenses for the lease of space which may include at the City’s discretion, tenant improvements, utilities, renter’s insurance, fire insurance, real property taxes, janitorial services, internet, telephone and other expenses related to the lease at the Innovation Factory (**“Attachment “B”**).

**3.2 ADVANCED MANUFACTURING PROJECT.** The advanced manufacturing “Project” to be conducted by the Applicant under this Agreement is further described and attached hereto as **Attachment “A”**.

**3.3 INNOVATION FACTORY POLICY COMPLIANCE.** Applicant agrees to comply with the Innovation Factory Policy and ARPA regulations at all times. Applicant understands that failure to comply with the Innovation Factory Policy and ARPA regulations may result in termination of this agreement per Article IV of this Agreement.

## ARTICLE IV. PERIOD OF SERVICE AND TERMINATION

**4.1 PERIOD OF SERVICE.** The Project shall begin upon the execution by all parties to this Agreement. The Applicant shall complete the requested services in accordance with the timeline(s) and schedule(s) outlined in **Attachment “A”**.

**4.2 TERMINATION.** This Agreement may be terminated as provided herein.

**4.2.1 TERMINATION BY CITY.** It is mutually understood and agreed by the Applicant and CITY that the CITY may terminate this Agreement, in whole or in part for the convenience of the CITY, upon **fourteen (14) consecutive calendar days’** written notice. It is also understood and agreed that upon such notice of termination, the Applicant shall cease operations under this Agreement. Upon such termination, the Applicant shall provide one final report for the Project prior to the CITY’s notice of termination. Nothing contained herein, or elsewhere in this Agreement shall require the CITY to pay for any services or costs that are not in compliance with the terms of this Agreement and its attachments.

**4.2.2 TERMINATION BY EITHER PARTY.** It is further understood and agreed by the Applicant and CITY that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the CITY retains the right to immediately terminate this Agreement for default if the Applicant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement.

**4.2.3 TERMINATION FOR FAILURE TO COMPLY WITH SUBCHAPTER J, CHAPTER 552, GOVERNMENT CODE.** The requirements of subchapter J, Chapter 552, Government Code, may apply to this Contract. Applicant agrees that the Contract can be terminated if the Applicant or any of its vendor(s) knowingly or intentionally fails to comply with a requirement of that subchapter.

**4.2.4 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

**4.2.5 CITY REIMBURSEMENT FOR FAILURE TO MEET FEDERAL GUIDELINES.** In the event of termination by the CITY due to Applicants failure to meet ARPA or Final Rule requirements, the CITY MAY REQUIRE APPLICANT TO FULLY REIMBURSE THE CITY WITHIN THIRTY (30) DAYS' FOR ANY PAYMENTS OR BENEFITS RECEIVED BY APPLICANT NOT IN COMPLIANCE WITH THIS AGREEMENT OR ITS ATTACHMENTS.

## **ARTICLE V. INSURANCE AND INDEMNIFICATION**

**5.1 INSURANCE.** The Applicant shall procure and maintain insurance coverage as required herein and attached in **Attachment "C"**. Applicant shall not commence work under this Agreement until the Applicant has obtained the required insurance and such insurance has been approved by the CITY. The Applicant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

**5.1.1 WORKERS' COMPENSATION INSURANCE.** The Applicant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Applicant's employees to be engaged in work under this Agreement. The Applicant shall provide the following endorsement:

"The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the CITY, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured."

**5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE.** The Applicant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability

Insurance as shall protect the Applicant and the Applicant's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Applicant or by anyone directly or indirectly employed by the Applicant. The minimum limits of liability and coverages shall be as follows:

- a) **Commercial General Liability**  
\$1,000,000.00 Per Occurrence  
\$1,000,000.00 Products/Completed Operations  
\$1,000,000.00 Personal and Advertising Injury
- b) **AUTOMOBILE LIABILITY Combined Single Limit**  
\$1,000,000.00 per accident

**5.1.3 OWNER AS ADDITIONAL INSURED.** The CITY shall be named as an Additional Insured on all of the Applicant's Insurance Policies, with the exception of Workers' Compensation required by this Agreement.

**5.1.4 PROOF OF INSURANCE.** The Applicant shall furnish certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this Agreement.

**5.1.5 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "C"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

**5.2 INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, APPLICANT SHALL INDEMNIFY HOLD HARMLESS, AND DEFEND CITY, AND CITY'S OFFICERS, DIRECTORS, PARTNERS, AGENTS CONSULTANTS, AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF CONSULTANTS, SUBCONSULTANTS, VENDORS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE PROJECT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF THE CITY, PROVIDED THAT ANY SUCH CLAIM, COST, LOSS, OR DAMAGE IS ATTRIBUTABLE TO ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR, VENDOR, OR SUPPLIER COMMITTED BY APPLICANT OR APPLICANT'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, CONSULTANTS OR EMPLOYEES. THE APPLICANT SHALL NOT BE RESPONSIBLE FOR ANY ACTS OF ANY OF THE CITY'S INDEPENDENT PROJECT MANAGERS. TO THE EXTENT ALLOWED BY STATE LAW, THE CITY WILL BE RESPONSIBLE FOR ITS OWN ACTIONS.**

## **ARTICLE VII. GENERAL PROVISIONS**

**7.1 CONTRACT TIME.** Applicant understands and agrees to conduct the Project as expeditiously as is prudent and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within Attachment “A”.

**7.2 ADDITIONAL TERMS AND CONDITIONS (ARPA).** Applicant agrees to comply and adhere to all terms and conditions associated with the CITY’s receipt of ARPA funds. Applicant’s ease of reference links and references to the additional Terms and Conditions are attached to this Agreement as **Attachment D**.

**7.3 COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the concepts, design, and other documents prepared by the Applicant for this Project including, without limitation, those in electronic form (sometimes referred to as the “Instruments of Service”) are the property of the CITY, who shall be vested with all common law and statutory rights. The CITY shall have the right to the use of the documents; provided however the Applicant shall have no liability for any use of one or more of the Instruments of Service by the CITY. The CITY shall have the consent of the Applicant, provided, however, the Applicant shall have no liability or responsibility for such use of the concepts, design, and other documents. The rights granted to the CITY herein for the use of the documents for additional projects shall not grant the CITY any right to hold the Applicant responsible for any subsequent use of the documents. The Applicant shall provide the CITY with copies of the Instruments of Service in both electronic form and in hard copy.

**7.4 AUDITING RECORDS FOR THE SPECIFIC PROJECT.** Applicant records subject to audit shall include but not be limited to records which, have a bearing on matters of interest to the CITY in connection with the Applicant’s work on this Project for the CITY and shall be open to inspection and subject to audit and/or reproduction by CITY’s agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Applicant’s compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Applicant’s records have been generated from computerized data, Applicant agrees to provide CITY’s representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The CITY or its designee shall be entitled, at its expense, to audit all of the Applicant’s records related to this Project, and shall be allowed to interview any of the Applicant’s employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law or the additional Terms and Conditions referred to in Section 7.2 above. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times (limited to Applicant’s office hours) and places upon reasonable notice.

## 7.5 CONTRACTING INFORMATION

The Contractor must preserve all contracting information related to this Contract as provided by the records retention schedule requirements applicable to the City for the duration of this Contract. Contractor will promptly provide the City any contracting information related to this Contract that is in the custody or possession of the Contractor on request of the City. On completion of this Contract, Contractor will either provide at no cost to the City all contracting information related to this Contract that is in the custody or possession of the Contractor or preserve the contracting information related to this Contract as provided by the records retention requirements applicable to the City.

**7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the CITY and the Applicant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

**7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

**7.8 GOVERNING LAW.** The Applicant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

**7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

**7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

**7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the CITY:                      The City of El Paso Attn: City Manager  
P. O. Box 1890  
El Paso, Texas 79950-1890

With a Copy to:                The City of El Paso  
Attn: Economic and International Development  
P. O. Box 1890  
El Paso, Texas 79950-1890

To the Applicant:              \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

Applicant shall provide all required invoices and other required documentation to City electronically at the following address: EDcompliance@elpasotexas.gov

**7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

**7.13 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

*[SIGNATURES BEGIN ON THE FOLLOWING PAGE]*

**WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:**

**CITY:**  
**CITY OF EL PASO:**

\_\_\_\_\_  
Tomás González  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Russell T. Abeln  
Assistant City Attorney

\_\_\_\_\_  
Elizabeth K. Triggs, Director  
Economic and International Development

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS   §**  
  **§**  
**COUNTY OF EL PASO   §**

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
**Tomás González, as City Manager of the City of El Paso, Texas.**

\_\_\_\_\_  
**Notary Public, State of Texas**

**My commission expires:**    \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

*(Signatures continue on the following page)*



**APPLICANT:**

\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGEMENT**

**THE STATE OF TEXAS   §  
                                  §  
COUNTY OF EL PASO   §**

      This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
**Notary Public, State of Texas**

**My commission expires:**     \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

**ATTACHMENT “A”**  
**PROJECT**

**ATTACHMENT “B”**  
**RENT AND OPERATION EXPENSES**

**ATTACHMENT “C”**  
**INSURANCE CERTIFICATES / CERTIFICATIONS**

**ATTACHMENT “D”**  
**ADDITIONAL TERMS & CONDITIONS (ARPA)**

Applicant must abide by the following, as may be updated and revised.

- A) **[Social Security Act Title VI Sections 602 and 603, Enacted March 11, 2021.](#)**
- B) **[Compliance and Reporting Guidance for the State and Local Fiscal Recovery Funds](#)**
- C) **[2022 State and Local Fiscal Recovery Fund Compliance Supplement](#)**
- D) **[Coronavirus State and Local Fiscal Recovery Funds Final Rule Frequently Asked Questions](#)**

In addition to the above requirements, Applicant must comply with the April 1, 2022 Final Rule for the Coronavirus State & Local Fiscal Recovery Funds. An overview of the federal agency requirements in the Final Rule is attached for ease of use of Applicant.



# **Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule**

U.S. DEPARTMENT OF THE TREASURY

January 2022



**The Overview of the Final Rule provides a summary of major provisions of the final rule for informational purposes and is intended as a brief, simplified user guide to the final rule provisions.**

The descriptions provided in this document summarize key provisions of the final rule but are non-exhaustive, do not describe all terms and conditions associated with the use of SLFRF, and do not describe all requirements that may apply to this funding. Any SLFRF funds received are also subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the final rule and the guidance that implements this program.



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## Introduction

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF), a part of the American Rescue Plan, delivers \$350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency. The program ensures that governments have the resources needed to:

- Fight the pandemic and support families and businesses struggling with its public health and economic impacts,
- Maintain vital public services, even amid declines in revenue, and
- Build a strong, resilient, and equitable recovery by making investments that support long-term growth and opportunity.

### EARLY PROGRAM IMPLEMENTATION

In May 2021, Treasury published the Interim final rule (IFR) describing eligible and ineligible uses of funds (as well as other program provisions), sought feedback from the public on these program rules, and began to distribute funds. The IFR went immediately into effect in May, and since then, governments have used SLFRF funds to meet their immediate pandemic response needs and begin building a strong and equitable recovery, such as through providing vaccine incentives, development of affordable housing, and construction of infrastructure to deliver safe and reliable water.

As governments began to deploy this funding in their communities, Treasury carefully considered the feedback provided through its public comment process and other forums. Treasury received over 1,500 comments, participated in hundreds of meetings, and received correspondence from a wide range of governments and other stakeholders.

### KEY CHANGES AND CLARIFICATIONS IN THE FINAL RULE

The final rule delivers broader flexibility and greater simplicity in the program, responsive to feedback in the comment process. Among other clarifications and changes, the final rule provides the features below.

#### Replacing Lost Public Sector Revenue

The final rule offers a standard allowance for revenue loss of up to \$10 million, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount – in many cases their full award – for government services, with streamlined reporting requirements.

#### Public Health and Economic Impacts

In addition to programs and services, the final rule clarifies that recipients can use funds for capital expenditures that support an eligible COVID-19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with final rule requirements.



In addition, the final rule provides an expanded set of households and communities that are presumed to be “impacted” and “disproportionately impacted” by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of uses available for these communities as part of COVID-19 public health and economic response, including making affordable housing, childcare, early learning, and services to address learning loss during the pandemic eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient’s pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

#### **Premium Pay**

The final rule delivers more streamlined options to provide premium pay, by broadening the share of eligible workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline workers performing essential work.

#### **Water, Sewer & Broadband Infrastructure**

The final rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broader range of lead remediation and stormwater management projects.

#### **FINAL RULE EFFECTIVE DATE**

The final rule takes effect on April 1, 2022. Until that time, the interim final rule remains in effect; funds used consistently with the IFR while it is in effect are in compliance with the SLFRF program.

However, recipients can choose to take advantage of the final rule’s flexibilities and simplifications now, even ahead of the effective date. Treasury will not take action to enforce the interim final rule to the extent that a use of funds is consistent with the terms of the final rule, regardless of when the SLFRF funds were used. Recipients may consult the *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule*, which can be found on Treasury’s website, for more information on compliance with the interim final rule and the final rule.



## Overview of the Program

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program provides substantial flexibility for each jurisdiction to meet local needs within the four separate eligible use categories. This Overview of the Final Rule addresses the four eligible use categories ordered from the broadest and most flexible to the most specific.

Recipients may use SLFRF funds to:

- **Replace lost public sector revenue**, using this funding to provide government services up to the amount of revenue loss due to the pandemic.
  - Recipients may determine their revenue loss by choosing between two options:
    - A standard allowance of up to \$10 million in aggregate, not to exceed their award amount, during the program;
    - Calculating their jurisdiction's specific revenue loss each year using Treasury's formula, which compares actual revenue to a counterfactual trend.
  - Recipients may use funds up to the amount of revenue loss for government services; generally, services traditionally provided by recipient governments are government services, unless Treasury has stated otherwise.
- **Support the COVID-19 public health and economic response** by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector.
  - Recipients can use funds for programs, services, or capital expenditures that respond to the public health and negative economic impacts of the pandemic.
  - To provide simple and clear eligible uses of funds, Treasury provides a list of enumerated uses that recipients can provide to households, populations, or classes (i.e., groups) that experienced pandemic impacts.
  - Public health eligible uses include COVID-19 mitigation and prevention, medical expenses, behavioral healthcare, and preventing and responding to violence.
  - Eligible uses to respond to negative economic impacts are organized by the type of beneficiary: assistance to households, small businesses, and nonprofits.
    - Each category includes assistance for "impacted" and "disproportionately impacted" classes: impacted classes experienced the general, broad-based impacts of the pandemic, while disproportionately impacted classes faced meaningfully more severe impacts, often due to preexisting disparities.
    - To simplify administration, the final rule presumes that some populations and groups were impacted or disproportionately impacted and are eligible for responsive services.

*Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule*

*U.S. Department of the Treasury*

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- Eligible uses for assistance to impacted households include aid for re-employment, job training, food, rent, mortgages, utilities, affordable housing development, childcare, early education, addressing learning loss, and many **more uses**.
- Eligible uses for assistance to impacted small businesses or nonprofits include loans or grants to mitigate financial hardship, technical assistance for small businesses, and many more uses.
- Recipients can also provide assistance to impacted industries like travel, tourism, and hospitality that faced substantial pandemic impacts, or address impacts to the public sector, for example by re-hiring public sector workers cut during the crisis.
- Recipients providing funds for enumerated uses to populations and groups that Treasury has presumed eligible are clearly operating consistently with the final rule. Recipients can also identify (1) other populations or groups, beyond those presumed eligible, that experienced pandemic impacts or disproportionate impacts and (2) other programs, services, or capital expenditures, beyond those enumerated, to respond to those impacts.
- **Provide premium pay for eligible workers performing essential work**, offering additional support to those who have and will bear the greatest health risks because of their service in critical sectors.
  - Recipients may provide premium pay to eligible workers – generally those working in-person in key economic sectors – who are below a wage threshold or non-exempt from the Fair Labor Standards Act overtime provisions, or if the recipient submits justification that the premium pay is responsive to workers performing essential work.
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand affordable access to broadband internet.
  - Recipients may fund a broad range of water and sewer projects, including those eligible under the EPA's Clean Water State Revolving Fund, EPA's Drinking Water State Revolving Fund, and certain additional projects, including a wide set of lead remediation, stormwater infrastructure, and aid for private wells and septic units.
  - Recipients may fund high-speed broadband infrastructure in areas of need that the recipient identifies, such as areas without access to adequate speeds, affordable options, or where connections are inconsistent or unreliable; completed projects must participate in a low-income subsidy program.

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use apply across all eligible use categories. These include:

- **For states and territories:** No offsets of a reduction in net tax revenue resulting from a change in state or territory law.

*Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule*



- **For all recipients except for Tribal governments:** No extraordinary contributions to a pension fund for the purpose of reducing an accrued, unfunded liability.
- **For all recipients:** No payments for debt service and replenishments of rainy day funds; no satisfaction of settlements and judgments; no uses that contravene or violate the American Rescue Plan Act, Uniform Guidance conflicts of interest requirements, and other federal, state, and local laws and regulations.

Under the SLFRF program, funds must be used for costs incurred on or after March 3, 2021. Further, funds must be obligated by December 31, 2024, and expended by December 31, 2026. This time period, during which recipients can expend SLFRF funds, is the “period of performance.”

In addition to SLFRF, the American Rescue Plan includes other sources of funding for state and local governments, including the [Coronavirus Capital Projects Fund](#) to fund critical capital investments including broadband infrastructure; the [Homeowner Assistance Fund](#) to provide relief for our country’s most vulnerable homeowners; the [Emergency Rental Assistance Program](#) to assist households that are unable to pay rent or utilities; and the [State Small Business Credit Initiative](#) to fund small business credit expansion initiatives. Eligible recipients are encouraged to visit the Treasury website for more information.



## Replacing Lost Public Sector Revenue

The Coronavirus State and Local Fiscal Recovery Funds provide needed fiscal relief for recipients that have experienced revenue loss due to the onset of the COVID-19 public health emergency. Specifically, SLFRF funding may be used to pay for “government services” in an amount equal to the revenue loss experienced by the recipient due to the COVID-19 public health emergency.

Government services generally include any service traditionally provided by a government, including construction of roads and other infrastructure, provision of public safety and other services, and health and educational services. Funds spent under government services are subject to streamlined reporting and compliance requirements.

In order to use funds under government services, recipients should first determine revenue loss. They may, then, spend up to that amount on general government services.

### DETERMINING REVENUE LOSS

Recipients have two options for how to determine their amount of revenue loss. Recipients must choose one of the two options and cannot switch between these approaches after an election is made.

**1. Recipients may elect a “standard allowance” of \$10 million to spend on government services through the period of performance.**

Under this option, which is newly offered in the final rule Treasury presumes that up to \$10 million in revenue has been lost due to the public health emergency and recipients are permitted to use that amount (not to exceed the award amount) to fund “government services.” The standard allowance provides an estimate of revenue loss that is based on an extensive analysis of average revenue loss across states and localities, and offers a simple, convenient way to determine revenue loss, particularly for SLFRF’s smallest recipients.

All recipients may elect to use this standard allowance instead of calculating lost revenue using the formula below, including those with total allocations of \$10 million or less. Electing the standard allowance does not increase or decrease a recipient’s total allocation.

**2. Recipients may calculate their actual revenue loss according to the formula articulated in the final rule.**

Under this option, recipients calculate revenue loss at four distinct points in time, either at the end of each calendar year (e.g., December 31 for years 2020, 2021, 2022, and 2023) or the end of each fiscal year of the recipient. Under the flexibility provided in the final rule, recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance. Treasury has also provided several adjustments to the definition of general revenue in the final rule.

To calculate revenue loss at each of these dates, recipients must follow a four-step process:

*Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule*

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- a. Calculate revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the *base year revenue*.
- b. Estimate *counterfactual revenue*, which is equal to the following formula, where *n* is the number of months elapsed since the end of the base year to the calculation date:

$$\text{base year revenue} \times (1 + \text{growth adjustment})^{\frac{n}{12}}$$

The *growth adjustment* is the greater of either a standard growth rate—5.2 percent—or the recipient’s average annual revenue growth in the last full three fiscal years prior to the COVID-19 public health emergency.

- c. Identify *actual revenue*, which equals revenues collected over the twelve months immediately preceding the calculation date.

Under the final rule, recipients must adjust actual revenue totals for the effect of tax cuts and tax increases that are adopted after the date of adoption of the final rule (January 6, 2022). Specifically, the estimated fiscal impact of tax cuts and tax increases adopted after January 6, 2022, must be added or subtracted to the calculation of actual revenue for purposes of calculation dates that occur on or after April 1, 2022.

Recipients may subtract from their calculation of actual revenue the effect of tax increases enacted prior to the adoption of the final rule. Note that recipients that elect to remove the effect of tax increases enacted before the adoption of the final rule must also remove the effect of tax decreases enacted before the adoption of the final rule, such that they are accurately removing the effect of tax policy changes on revenue.

- d. Revenue loss for the calculation date is equal to *counterfactual revenue* minus *actual revenue* (adjusted for tax changes) for the twelve-month period. If actual revenue exceeds counterfactual revenue, the loss is set to zero for that twelve-month period. Revenue loss for the period of performance is the sum of the revenue loss on for each calculation date.

The supplementary information in the final rule provides an example of this calculation, which recipients may find helpful, in the Revenue Loss section.



### SPENDING ON GOVERNMENT SERVICES

Recipients can use SLFRF funds on government services up to the revenue loss amount, whether that be the standard allowance amount or the amount calculated using the above approach. **Government services generally include *any service traditionally provided by a government***, unless Treasury has stated otherwise. Here are some common examples, although this list is not exhaustive:

- ✓ Construction of schools and hospitals
- ✓ Road building and maintenance, and other infrastructure
- ✓ Health services
- ✓ General government administration, staff, and administrative facilities
- ✓ Environmental remediation
- ✓ Provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles)

Government services is the most flexible eligible use category under the SLFRF program, and funds are subject to streamlined reporting and compliance requirements. Recipients should be mindful that certain restrictions, which are detailed further in the Restrictions on Use section and apply to all uses of funds, apply to government services as well.





## Responding to Public Health and Economic Impacts of COVID-19

The Coronavirus State and Local Fiscal Recovery Funds provide resources for governments to meet the public health and economic needs of those impacted by the pandemic in their communities, as well as address longstanding health and economic disparities, which amplified the impact of the pandemic in disproportionately impacted communities, resulting in more severe pandemic impacts.

The eligible use category to respond to public health and negative economic impacts is organized around the types of assistance a recipient may provide and includes several sub-categories:

- public health,
- assistance to households,
- assistance to small businesses,
- assistance to nonprofits,
- aid to impacted industries, and
- public sector capacity.

In general, to identify eligible uses of funds in this category, recipients should (1) identify a COVID-19 public health or economic impact on an individual or class (i.e., a group) and (2) design a program that responds to that impact. Responses should be related and reasonably proportional to the harm identified and reasonably designed to benefit those impacted.

To provide simple, clear eligible uses of funds that meet this standard, Treasury provides a non-exhaustive list of enumerated uses that respond to pandemic impacts. Treasury also presumes that some populations experienced pandemic impacts and are eligible for responsive services. In other words, recipients providing enumerated uses of funds to populations presumed eligible are clearly operating consistently with the final rule.<sup>1</sup>

Recipients also have broad flexibility to (1) identify and respond to other pandemic impacts and (2) serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients can also identify groups or “classes” of beneficiaries that experienced pandemic impacts and provide services to those classes.

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<sup>1</sup> However, please note that use of funds for enumerated uses may not be grossly disproportionate to the harm. Further, recipients should consult the Capital Expenditures section for more information about pursuing a capital expenditure; please note that enumerated capital expenditures are not presumed to be reasonably proportional responses to an identified harm except as provided in the Capital Expenditures section.

*Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule*



Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
<b>Analysis</b>	<ul style="list-style-type: none"> <li>Can identify impact to a specific household, business or nonprofit or to a class of households, businesses, or nonprofits (i.e., group)</li> <li>Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class</li> </ul>	<ul style="list-style-type: none"> <li>Types of responses can include a program, service, or capital expenditure</li> <li>Response should be related and reasonably proportional to the harm</li> <li>Response should also be reasonably designed to benefit impacted individual or class</li> </ul>
<b>Simplifying Presumptions</b>	<ul style="list-style-type: none"> <li>Final Rule presumes certain populations and classes are impacted and disproportionately impacted</li> </ul>	<ul style="list-style-type: none"> <li>Final Rule provides non-exhaustive list of enumerated eligible uses that respond to pandemic impacts and disproportionate impacts</li> </ul>

To assess eligibility of uses of funds, recipients should first determine the sub-category where their use of funds may fit (e.g., public health, assistance to households, assistance to small businesses), based on the entity that experienced the health or economic impact.<sup>2</sup> Then, recipients should refer to the relevant section for more details on each sub-category.

While the same overall eligibility standard applies to all uses of funds to respond to the public health and negative economic impacts of the pandemic, each sub-category has specific nuances on its application. In addition:

- Recipients interested in using funds for capital expenditures (i.e., investments in property, facilities, or equipment) should review the Capital Expenditures section in addition to the eligible use sub-category.
- Recipients interested in other uses of funds, beyond the enumerated uses, should refer to the section on “Framework for Eligible Uses Beyond Those Enumerated.”

<sup>2</sup> For example, a recipient interested in providing aid to unemployed individuals is addressing a negative economic impact experienced by a household and should refer to the section on assistance to households. Recipients should also be aware of the difference between “beneficiaries” and “sub-recipients.” Beneficiaries are households, small businesses, or nonprofits that can receive assistance based on impacts of the pandemic that they experienced. On the other hand, sub-recipients are organizations that carry out eligible uses on behalf of a government, often through grants or contracts. Sub-recipients do not need to have experienced a negative economic impact of the pandemic; rather, they are providing services to beneficiaries that experienced an impact.

*Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule*

**RESPONDING TO THE PUBLIC HEALTH EMERGENCY**

While the country has made tremendous progress in the fight against COVID-19, including a historic vaccination campaign, the disease still poses a grave threat to Americans' health and the economy. Providing state, local, and Tribal governments the resources needed to fight the COVID-19 pandemic is a core goal of the Coronavirus State and Local Fiscal Recovery Funds, as well as addressing the other ways that the pandemic has impacted public health. Treasury has identified several public health impacts of the pandemic and enumerated uses of funds to respond to impacted populations.

- **COVID-19 mitigation and prevention.** The pandemic has broadly impacted Americans and recipients can provide services to prevent and mitigate COVID-19 to the general public or to small businesses, nonprofits, and impacted industries in general. Enumerated eligible uses include:
  - ✓ Vaccination programs, including vaccine incentives and vaccine sites
  - ✓ Testing programs, equipment and sites
  - ✓ Monitoring, contact tracing & public health surveillance (e.g., monitoring for variants)
  - ✓ Public communication efforts
  - ✓ Public health data systems
  - ✓ COVID-19 prevention and treatment equipment, such as ventilators and ambulances
  - ✓ Medical and PPE/protective supplies
  - ✓ Support for isolation or quarantine
  - ✓ Ventilation system installation and improvement
  - ✓ Technical assistance on mitigation of COVID-19 threats to public health and safety
  - ✓ Transportation to reach vaccination or testing sites, or other prevention and mitigation services for vulnerable populations
  - ✓ Support for prevention, mitigation, or other services in congregate living facilities, public facilities, and schools
  - ✓ Support for prevention and mitigation strategies in small businesses, nonprofits, and impacted industries
  - ✓ Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., ICUs, emergency rooms)
  - ✓ Temporary medical facilities and other measures to increase COVID-19 treatment capacity
  - ✓ Emergency operations centers & emergency response equipment (e.g., emergency response radio systems)
  - ✓ Public telemedicine capabilities for COVID-19 related treatment



- **Medical expenses.** Funds may be used for expenses to households, medical providers, or others that incurred medical costs due to the pandemic, including:
  - ✓ Unreimbursed expenses for medical care for COVID-19 testing or treatment, such as uncompensated care costs for medical providers or out-of-pocket costs for individuals
  - ✓ Paid family and medical leave for public employees to enable compliance with COVID-19 public health precautions
  - ✓ Emergency medical response expenses
  - ✓ Treatment of long-term symptoms or effects of COVID-19
  
- **Behavioral health care, such as mental health treatment, substance use treatment, and other behavioral health services.** Treasury recognizes that the pandemic has broadly impacted Americans' behavioral health and recipients can provide these services to the general public to respond. Enumerated eligible uses include:
  - ✓ Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, outreach to individuals not yet engaged in treatment, harm reduction & long-term recovery support
  - ✓ Enhanced behavioral health services in schools
  - ✓ Services for pregnant women or infants born with neonatal abstinence syndrome
  - ✓ Support for equitable access to reduce disparities in access to high-quality treatment
  - ✓ Peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services
  - ✓ Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery
  - ✓ Behavioral health facilities & equipment
  
- **Preventing and responding to violence.** Recognizing that violence – and especially gun violence – has increased in some communities due to the pandemic, recipients may use funds to respond in these communities through:
  - ✓ Referrals to trauma recovery services for victims of crime
  - ✓ Community violence intervention programs, including:
    - Evidence-based practices like focused deterrence, with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance
  - ✓ In communities experiencing increased gun violence due to the pandemic:
    - Law enforcement officers focused on advancing community policing
    - Enforcement efforts to reduce gun violence, including prosecution
    - Technology & equipment to support law enforcement response

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## RESPONDING TO NEGATIVE ECONOMIC IMPACTS

The pandemic caused severe economic damage and, while the economy is on track to a strong recovery, **much work remains to continue building a robust, resilient, and equitable economy in the wake of the crisis** and to ensure that the benefits of this recovery reach all Americans. While the pandemic impacted millions of American households and businesses, some of its most severe impacts fell on low-income and underserved communities, where pre-existing disparities amplified the impact of the pandemic and where the most work remains to reach a full recovery.

The final rule recognizes that the pandemic caused broad-based impacts that affected many communities, households, and small businesses across the country; for example, many workers faced unemployment and many small businesses saw declines in revenue. The final rule describes these as “impacted” households, communities, small businesses, and nonprofits.

At the same time, the pandemic caused disproportionate impacts, or more severe impacts, in certain communities. For example, low-income and underserved communities have faced more severe health and economic outcomes like higher rates of COVID-19 mortality and unemployment, often because pre-existing disparities exacerbated the impact of the pandemic. The final rule describes these as “disproportionately impacted” households, communities, small businesses, and nonprofits.

To simplify administration of the program, the final rule presumes that certain populations were “impacted” and “disproportionately impacted” by the pandemic; these populations are presumed to be eligible for services that respond to the impact they experienced. The final rule also enumerates a non-exhaustive list of eligible uses that are recognized as responsive to the impacts or disproportionate impacts of COVID-19. **Recipients providing enumerated uses to populations presumed eligible are clearly operating consistently with the final rule.**

As discussed further in the section Framework for Eligible Uses Beyond Those Enumerated, recipients can also identify other pandemic impacts, impacted or disproportionately impacted populations or classes, and responses.

However, note that the final rule maintains that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible under this eligible use category, unless the project responded to a specific pandemic public health need or a specific negative economic impact. Similarly, general economic development or workforce development – activities that do not respond to negative economic impacts of the pandemic but rather seek to more generally enhance the jurisdiction’s business climate – would generally not be eligible under this eligible use category.

**Assistance to Households*****Impacted Households and Communities***

Treasury presumes the following households and communities are impacted by the pandemic:

- ✓ Low- or-moderate income households or communities
- ✓ Households that experienced unemployment
- ✓ Households that experienced increased food or housing insecurity
- ✓ Households that qualify for the Children's Health Insurance Program, Childcare Subsidies through the Child Care Development Fund (CCDF) Program, or Medicaid
- ✓ *When providing affordable housing programs:* households that qualify for the National Housing Trust Fund and Home Investment Partnerships Program
- ✓ *When providing services to address lost instructional time in K-12 schools:* any student that lost access to in-person instruction for a significant period of time

Low- or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines or (ii) income at or below 65 percent of the area median income for the county and size of household based on the most recently published data. For the vast majority of communities, the Federal Poverty Guidelines are higher than the area's median income and using the Federal Poverty Guidelines would result in more households and communities being presumed eligible. Treasury has provided an easy-to-use spreadsheet with Federal Poverty Guidelines and area median income levels on its website.

Recipients can measure income for a specific household or the median income for the community, depending on whether the response they plan to provide serves specific households or the general community. The income thresholds vary by household size; recipients should generally use income thresholds for the appropriate household size but can use a default household size of three when easier for administration or when measuring income for a general community.

The income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$65,880 per year.<sup>3</sup> In other words, recipients can always presume that a household earning below this level, or a community with median income below this level, is impacted by the pandemic and eligible for services to respond. Additionally, by following the steps detailed in the section Framework for Eligible Uses Beyond Those Enumerated, recipients may designate additional households as impacted or disproportionately impacted beyond these presumptions, and may also pursue projects not listed below in response to these impacts consistent with Treasury's standards.

<sup>3</sup> For recipients in Alaska, the income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$82,350 per year. For recipients in Hawaii, the income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$75,780 per year.



Treasury recognizes the enumerated projects below, which have been expanded under the final rule, as eligible to respond to impacts of the pandemic on households and communities:

- ✓ Food assistance (e.g., child nutrition programs, including school meals) & food banks
- ✓ Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counseling and legal aid to prevent eviction and homelessness & emergency programs or services for homeless individuals, including temporary residences for people experiencing homelessness
- ✓ Health insurance coverage expansion
- ✓ Benefits for surviving family members of individuals who have died from COVID-19
- ✓ Assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, incentives for newly-employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses & development of job and workforce training centers
- ✓ Financial services for the unbanked and underbanked
- ✓ Burials, home repair & home weatherization
- ✓ Programs, devices & equipment for internet access and digital literacy, including subsidies for costs of access
- ✓ Cash assistance
- ✓ Paid sick, medical, and family leave programs
- ✓ Assistance in accessing and applying for public benefits or services
- ✓ Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth & childcare facilities
- ✓ Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)
- ✓ Programs or services to support long-term housing security: including development of affordable housing and permanent supportive housing
- ✓ Certain contributions to an Unemployment Insurance Trust Fund<sup>4</sup>

<sup>4</sup> Recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. Additionally, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that balance and deposit more SLFRF funds, back up to the pre-pandemic balance. Recipients that deposit SLFRF funds into an unemployment insurance trust fund, or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).

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***Disproportionately Impacted Households and Communities***

Treasury presumes the following households and communities are disproportionately impacted by the pandemic:

- ✓ Low-income households and communities
- ✓ Households residing in Qualified Census Tracts
- ✓ Households that qualify for certain federal benefits<sup>5</sup>
- ✓ Households receiving services provided by Tribal governments
- ✓ Households residing in the U.S. territories or receiving services from these governments

Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the most recently published poverty guidelines or (ii) income at or below 40 percent of area median income for its county and size of household based on the most recently published data. For the vast majority of communities, the Federal Poverty Guidelines level is higher than the area median income level and using this level would result in more households and communities being presumed eligible. Treasury has provided an easy-to-use spreadsheet with Federal Poverty Guidelines and area median income levels on its website.

Recipients can measure income for a specific household or the median income for the community, depending on whether the service they plan to provide serves specific households or the general community. The income thresholds vary by household size; recipients should generally use income thresholds for the appropriate household size but can use a default household size of three when easier for administration or when measuring income for a general community.

The income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$40,626 per year.<sup>6</sup> In other words, recipients can always presume that a household earning below this level, or a community with median income below this level, is disproportionately impacted by the pandemic and eligible for services to respond.

<sup>5</sup> These programs are Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Free- and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income (SSI), Head Start and/or Early Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Section 8 Vouchers, Low-Income Home Energy Assistance Program (LIHEAP), and Pell Grants. For services to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible.

<sup>6</sup> For recipients in Alaska, the income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$50,783 per year. For recipients in Hawaii, the income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$46,731 per year





Treasury recognizes the enumerated projects below, which have been expanded under the final rule, as eligible to respond to disproportionate impacts of the pandemic on households and communities:

- ✓ Pay for community health workers to help households access health & social services
- ✓ Remediation of lead paint or other lead hazards
- ✓ Primary care clinics, hospitals, integration of health services into other settings, and other investments in medical equipment & facilities designed to address health disparities
- ✓ Housing vouchers & assistance relocating to neighborhoods with higher economic opportunity
- ✓ Investments in neighborhoods to promote improved health outcomes
- ✓ Improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup & conversion to affordable housing<sup>7</sup>
- ✓ Services to address educational disparities, including assistance to high-poverty school districts & educational and evidence-based services to address student academic, social, emotional, and mental health needs
- ✓ Schools and other educational equipment & facilities
- ✓ Responses available to respond to impacts of the pandemic on households and communities (including those listed on page 18)

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<sup>7</sup> Please see the final rule for further details and conditions applicable to this eligible use. This includes Treasury's presumption that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing is ineligible for support with SLFRF funds.



### Assistance to Small Businesses

Small businesses have faced widespread challenges due to the pandemic, including periods of **shutdown, declines in revenue, or increased costs**. The final rule provides many tools for recipients to respond to the impacts of the pandemic on small businesses, or disproportionate impacts on businesses where pre-existing disparities like lack of access to capital compounded the pandemic's effects.

Small businesses eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "small business," specifically:

1. Have no more than 500 employees, or if applicable, the size standard in number of employees [established](#) by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and
2. Are a small business concern as defined in section 3 of the Small Business Act<sup>8</sup> (which includes, among other requirements, that the business is independently owned and operated and is not dominant in its field of operation).

### Impacted Small Businesses

Recipients can identify small businesses impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- |                                       |  |
|---------------------------------------|--|
| ✓ Decreased revenue or gross receipts | ✓ Capacity to weather financial hardship                                   |
| ✓ Financial insecurity                | ✓ Challenges covering payroll, rent or mortgage, and other operating costs |
| ✓ Increased costs                     |  |

Assistance to small businesses that experienced negative economic impacts includes the following enumerated uses:

- |   |  |
|---|--|
| ✓ Loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees, and mortgage, rent, utility, and other operating costs | ✓ Technical assistance, counseling, or other services to support business planning |
|---|--|

### Disproportionately Impacted Small Businesses

Treasury presumes that the following small businesses are disproportionately impacted by the pandemic:

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<sup>8</sup> 15 U.S.C. 632.



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- ✓ Small businesses operating in Qualified Census Tracts
- ✓ **Small businesses operated by Tribal governments or on Tribal lands**
- ✓ Small businesses operating in the U.S. territories

Assistance to disproportionately impacted small businesses includes the following enumerated uses, which have been expanded under the final rule:

- ✓ Rehabilitation of commercial properties, storefront improvements & façade improvements
- ✓ Technical assistance, business incubators & grants for start-up or expansion costs for small businesses
- ✓ Support for microbusinesses, including financial, childcare, and transportation costs



### **Assistance to Nonprofits**

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and **changing operational needs, as well as declines in revenue sources such as donations and fees.**

Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

### **Impacted Nonprofits**

Recipients can identify nonprofits impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- ✓ Decreased revenue (e.g., from donations and fees)
- ✓ Financial insecurity
- ✓ Increased costs (e.g., uncompensated increases in service need)
- ✓ Capacity to weather financial hardship
- ✓ Challenges covering payroll, rent or mortgage, and other operating costs

Assistance to nonprofits that experienced negative economic impacts includes the following enumerated uses:

- ✓ Loans or grants to mitigate financial hardship
- ✓ Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic

### **Disproportionately Impacted Nonprofits**

Treasury presumes that the following nonprofits are disproportionately impacted by the pandemic:

- ✓ Nonprofits operating in Qualified Census Tracts
- ✓ Nonprofits operated by Tribal governments or on Tribal lands
- ✓ Nonprofits operating in the U.S. territories

Recipients may identify appropriate responses that are related and reasonably proportional to addressing these disproportionate impacts.



## Aid to Impacted Industries

Recipients may use SLFRF funding to provide aid to industries impacted by the COVID-19 pandemic. Recipients should first designate an impacted industry and then provide aid to address the impacted industry's negative economic impact.

This sub-category of eligible uses does not separately identify disproportionate impacts and corresponding responsive services.

**1. Designating an impacted industry.** There are two main ways an industry can be designated as “impacted.”

1. If the industry is in the travel, tourism, or hospitality sectors (including Tribal development districts), the industry is impacted.
2. If the industry is outside the travel, tourism, or hospitality sectors, the industry is impacted if:
  - a. The industry experienced at least 8 percent employment loss from pre-pandemic levels,<sup>9</sup> or
  - b. The industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, based on the totality of economic indicators or qualitative data (if quantitative data is unavailable), and if the impacts were generally due to the COVID-19 public health emergency.

Recipients have flexibility to define industries broadly or narrowly, but Treasury encourages recipients to define narrow and discrete industries eligible for aid. State and territory recipients also have flexibility to define the industries with greater geographic precision; for example, a state may identify a particular industry in a certain region of a state as impacted.

**2. Providing eligible aid to the impacted industry.** Aid may only be provided to support businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, aid should be generally broadly available to all businesses within the impacted industry to avoid potential conflicts of interest, and Treasury encourages aid to be first used for operational expenses, such as payroll, before being used on other types of costs.

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<sup>9</sup> Specifically, a recipient should compare the percent change in the number of employees of the recipient's identified industry and the national Leisure & Hospitality sector in the three months before the pandemic's most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021). For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (e.g., a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.

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Treasury recognizes the enumerated projects below as eligible responses to impacted industries.

- ✓ Aid to mitigate financial hardship, such as supporting payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities
- ✓ Technical assistance, counseling, or other services to support business planning
- ✓ COVID-19 mitigation and infection prevention measures (see section Public Health)

As with all eligible uses, recipients may pursue a project not listed above by undergoing the steps outlined in the section Framework for Eligible Uses Beyond Those Enumerated.

**PUBLIC SECTOR CAPACITY**

Recipients may use SLFRF funding to restore and bolster public sector capacity, which supports government's ability to deliver critical COVID-19 services. There are three main categories of eligible uses to bolster public sector capacity and workforce: Public Safety, Public Health, and Human Services Staff; Government Employment and Rehiring Public Sector Staff; and Effective Service Delivery.

**Public Safety, Public Health, and Human Services Staff**

SLFRF funding may be used for payroll and covered benefits for public safety, public health, health care, human services and similar employees of a recipient government, for the portion of the employee's time spent responding to COVID-19. Recipients should follow the steps below.

**1. Identify eligible public safety, public health, and human services staff.** Public safety staff include:

- ✓ Police officers (including state police officers)
- ✓ Sheriffs and deputy sheriffs
- ✓ Firefighters
- ✓ Emergency medical responders
- ✓ Correctional and detention officers
- ✓ Dispatchers and supervisor personnel that directly support public safety staff

Public health staff include:

- ✓ Employees involved in providing medical and other physical or mental health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions
- ✓ Laboratory technicians, medical examiners, morgue staff, and other support services essential for patient care
- ✓ Employees of public health departments directly engaged in public health matters and related supervisory personnel

Human services staff include:

- ✓ Employees providing or administering social services and public benefits
- ✓ Child welfare services employees
- ✓ Child, elder, or family care employees

**2. Assess portion of time spent on COVID-19 response for eligible staff.**

Recipients can use a variety of methods to assess the share of an employees' time spent responding to COVID-19, including using reasonable estimates—such as estimating the share of time based on discussions with staff and applying that share to all employees in that position.

For administrative convenience, recipients can consider public health and safety employees entirely devoted to responding to COVID-19 (and their payroll and benefits fully covered by SLFRF) if the

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employee, or his or her operating unit or division, is “primarily dedicated” to responding to COVID-19. Primarily dedicated means that more than half of the employee, unit, or division’s time is dedicated to responding to COVID-19.

Recipients must periodically reassess their determination and maintain records to support their assessment, although recipients do not need to track staff hours.

3. **Use SLFRF funding for payroll and covered benefits for the portion of eligible staff time spent on COVID-19 response.** SLFRF funding may be used for payroll and covered benefits for the portion of the employees’ time spent on COVID-19 response, as calculated above, through the period of performance.

#### **Government Employment and Rehiring Public Sector Staff**

Under the increased flexibility of the final rule, SLFRF funding may be used to support a broader set of uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring, support, and retention.

- **Restoring pre-pandemic employment.** Recipients have two options to restore pre-pandemic employment, depending on the recipient’s needs.
  - *If the recipient simply wants to hire back employees for pre-pandemic positions:* Recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021. Recipients may use SLFRF funds to cover payroll and covered benefits for such positions through the period of performance.
  - *If the recipient wants to hire above the pre-pandemic baseline and/or would like to have flexibility in positions:* Recipients may use SLFRF funds to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted FTEs up to 7.5 percent above its pre-pandemic baseline. Specifically, recipients should undergo the following steps:
    - a. Identify the recipient’s budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline*.
    - b. Multiply the pre-pandemic baseline by 1.075. This is called the *adjusted pre-pandemic baseline*.
    - c. Identify the recipient’s budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude the number of FTEs dedicated to responding to the COVID-19 public health emergency. This is called the *actual number of FTEs*.
    - d. Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be covered by SLFRF funds. Recipients do not have to hire for the same roles that existed pre-pandemic.

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Recipients may use SLFRF funds to cover payroll and covered benefits through the period of performance; these employees must have begun their employment on or after March 3, 2021. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level (i.e., the *actual number of FTEs*).

- **Supporting and retaining public sector workers.** Recipients can also use funds in other ways that support the public sector workforce.<sup>10</sup> These include:
  - **Providing additional funding for employees who experienced pay reductions or were furloughed** since the onset of the pandemic, up to the difference in the employee's pay, taking into account unemployment benefits received.
  - **Maintaining current compensation levels to prevent layoffs.** SLFRF funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary.
  - **Providing worker retention incentives, including reasonable increases in compensation** to persuade employees to remain with the employer as compared to other employment options. Retention incentives must be entirely additive to an employee's regular compensation, narrowly tailored to need, and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Treasury presumes that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as other requirements are met.
- **Covering administrative costs associated with administering the hiring, support, and retention programs above.**

#### Effective Service Delivery

SLFRF funding may be used to improve the efficacy of public health and economic programs through tools like program evaluation, data, and outreach, as well as to address administrative needs caused or exacerbated by the pandemic. Eligible uses include:

- **Supporting program evaluation, data, and outreach through:**

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<sup>10</sup> Recipients should be able to substantiate that these uses of funds are substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and respond to its impacts. See the final rule for details on these uses.

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- ✓ Program evaluation and evidence resources
  - ✓ Data analysis resources to gather, assess, share, and use data
  - ✓ Technology infrastructure to improve access to and the user experience of government IT systems, as well as technology improvements to increase public access and delivery of government programs and services
  - ✓ Community outreach and engagement activities
  - ✓ Capacity building resources to support using data and evidence, including hiring staff, consultants, or technical assistance support
- **Addressing administrative needs, including:**
    - ✓ Administrative costs for programs responding to the public health emergency and its economic impacts, including non-SLFRF and non-federally funded programs
    - ✓ Address administrative needs caused or exacerbated by the pandemic, including addressing backlogs caused by shutdowns, increased repair or maintenance needs, and technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, data and case management systems)

**CAPITAL EXPENDITURES**

As described above, the final rule clarifies that recipients may use funds for programs, services, and capital expenditures that respond to the public health and negative economic impacts of the pandemic. Any use of funds in this category for a capital expenditure must comply with the capital expenditure requirements, in addition to other standards for uses of funds.

Capital expenditures are subject to the same eligibility standard as other eligible uses to respond to the pandemic's public health and economic impacts; specifically, they must be related and reasonably proportional to the pandemic impact identified and reasonably designed to benefit the impacted population or class.

For ease of administration, the final rule identifies enumerated types of capital expenditures that Treasury has identified as responding to the pandemic's impacts; these are listed in the applicable sub-category of eligible uses (e.g., public health, assistance to households, etc.). Recipients may also identify other responsive capital expenditures. Similar to other eligible uses in the SLFRF program, no pre-approval is required for capital expenditures.

To guide recipients' analysis of whether a capital expenditure meets the eligibility standard, recipients (with the exception of Tribal governments) must complete and meet the requirements of a written justification for capital expenditures equal to or greater than \$1 million. For large-scale capital expenditures, which have high costs and may require an extended length of time to complete, as well as most capital expenditures for non-enumerated uses of funds, Treasury requires recipients to submit their written justification as part of regular reporting. Specifically:

<b>If a project has total capital expenditures of</b>	<b>and the use is enumerated by Treasury as eligible, then</b>	<b>and the use is beyond those enumerated by Treasury as eligible, then</b>
Less than \$1 million	No Written Justification required	No Written Justification required
Greater than or equal to \$1 million, but less than \$10 million	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury	Written Justification required and recipients must submit as part of regular reporting to Treasury
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury	

A Written Justification includes:

- *Description of the harm or need to be addressed.* Recipients should provide a description of the specific harm or need to be addressed and why the harm was exacerbated or caused by the public health emergency. Recipients may provide quantitative information on the extent and the type of harm, such as the number of individuals or entities affected.

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- *Explanation of why a capital expenditure is appropriate.* For example, recipients should include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.
- *Comparison of proposed capital project against at least two alternative capital expenditures and demonstration of why the proposed capital expenditure is superior.* Recipients should consider the effectiveness of the capital expenditure in addressing the harm identified and the expected total cost (including pre-development costs) against at least two alternative capital expenditures.

Where relevant, recipients should consider the alternatives of improving existing capital assets already owned or leasing other capital assets.

Treasury presumes that the following capital projects are generally ineligible:

- |   |   |
|---|---|
| ✖ Construction of new correctional facilities as a response to an increase in rate of crime | ✖ Construction of convention centers, stadiums, or other large capital projects intended for general economic development or to aid impacted industries |
| ✖ Construction of new congregate facilities to decrease spread of COVID-19 in the facility  |   |

In undertaking capital expenditures, Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

**FRAMEWORK FOR ELIGIBLE USES BEYOND THOSE ENUMERATED**

As described above, recipients have broad flexibility to identify and respond to other pandemic impacts and serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients should undergo the following steps to decide whether their project is eligible:

Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	<ul style="list-style-type: none"> <li>Can identify impact to a specific household, business or nonprofit or to a class of households, businesses or nonprofits (i.e., group)</li> <li>Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class</li> </ul>	<ul style="list-style-type: none"> <li>Types of responses can include a program, service, or capital expenditure</li> <li>Response should be related and reasonably proportional to the harm</li> <li>Response should also be reasonably designed to benefit impacted individual or class</li> </ul>

**1. Identify a COVID-19 public health or negative economic impact on an individual or a class.**

Recipients should identify an individual or class that is “impacted” or “disproportionately impacted” by the COVID-19 public health emergency or its negative economic impacts as well as the specific impact itself.

- “Impacted” entities are those impacted by the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency. For example, an individual who lost their job or a small business that saw lower revenue during a period of closure would both have experienced impacts of the pandemic.
- “Disproportionately impacted” entities are those that experienced disproportionate public health or economic outcomes from the pandemic; Treasury recognizes that pre-existing disparities, in many cases, amplified the impacts of the pandemic, causing more severe impacts in underserved communities. For example, a household living in a neighborhood with limited access to medical care and healthy foods may have faced health disparities before the pandemic, like a higher rate of chronic health conditions, that contributed to more severe health outcomes during the COVID-19 pandemic.

The recipient may choose to identify these impacts at either the individual level or at a class level. If the recipient is identifying impacts at the individual level, they should retain documentation supporting the impact the individual experienced (e.g., documentation of lost revenues from a small business). Such documentation can be streamlined in many cases (e.g., self-attestation that a household requires food assistance).

Recipients also have broad flexibility to identify a “class” – or a group of households, small businesses, or nonprofits – that experienced an impact. In these cases, the recipients should

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first identify the class and the impact that it faced. Then, recipients only need to document that the individuals served fall within that class; recipients do not need to document a specific impact to each individual served. For example, a recipient could identify that restaurants in the downtown area faced substantial declines in revenue due to decreased foot traffic from workers; the recipient could develop a program to respond to the impact on that class and only needs to document that the businesses being served are restaurants in the downtown area.

Recipients should keep the following considerations in mind when designating a class:

- **There should be a relationship between the definition of the class and the proposed response.** Larger and less-specific classes are less likely to have experienced similar harms, which may make it more difficult to design a response that appropriately responds to those harms.
- **Classes may be determined on a population basis or on a geographic basis,** and the response should be appropriately matched. For example, a response might be designed to provide childcare to single parents, regardless of which neighborhood they live in, or a response might provide a park to improve the health of a disproportionately impacted neighborhood.
- **Recipients may designate classes that experienced disproportionate impact,** by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. To determine these disproportionate impacts, recipients:
  - May designate classes based on academic research or government research publications (such as the citations provided in the supplementary information in the final rule), through analysis of their own data, or through analysis of other existing data sources.
  - May also consider qualitative research and sources to augment their analysis, or when quantitative data is not readily available. Such sources might include resident interviews or feedback from relevant state and local agencies, such as public health departments or social services departments.
  - Should consider the quality of the research, data, and applicability of analysis to their determination in all cases.
- **Some of the enumerated uses may also be appropriate responses to the impacts experienced by other classes of beneficiaries.** It is permissible for recipients to provide these services to other classes, so long as the recipient determines that the response is also appropriate for those groups.
- **Recipients may designate a class based on income level, including at levels higher than the final rule definition of "low- and moderate-income."** For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income nevertheless experienced disproportionate impacts from the pandemic and provide responsive services.

2. **Design a response that addresses or responds to the impact.** Programs, services, and other interventions must be reasonably designed to benefit the individual or class that experienced

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the impact. They must also be related and reasonably proportional to the extent and type of impact experienced. For example, uses that bear no relation or are grossly disproportionate to the type or extent of the impact would not be eligible.

“Reasonably proportional” refers to the scale of the response compared to the scale of the harm, as well as the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide a very small amount of aid to a group that experienced severe harm and a much larger amount to a group that experienced relatively little harm. Recipients should consider relevant factors about the harm identified and the response to evaluate whether the response is reasonably proportional. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

For disproportionately impacted communities, recipients may design interventions that address broader pre-existing disparities that contributed to more severe health and economic outcomes during the pandemic, such as disproportionate gaps in access to health care or pre-existing disparities in educational outcomes that have been exacerbated by the pandemic.



## Premium Pay

The Coronavirus State and Local Fiscal Recovery Funds may be used to provide premium pay to eligible workers performing essential work during the pandemic. Premium pay may be awarded to eligible workers up to \$13 per hour. Premium pay must be in addition to wages or remuneration (i.e., compensation) the eligible worker otherwise receives. Premium pay may not exceed \$25,000 for any single worker during the program.

Recipients should undergo the following steps to provide premium pay to eligible workers.

- 1. Identify an “eligible” worker.** Eligible workers include workers “needed to maintain continuity of operations of essential critical infrastructure sectors.” These sectors and occupations are eligible:

- |  |   |
|--|---|
| ✓ Health care  | ✓ State, local, or Tribal government workforce  |
| ✓ Emergency response   | ✓ Workers providing vital services to Tribes  |
| ✓ Sanitation, disinfection & cleaning  | ✓ Educational, school nutrition, and other work required to operate a school facility           |
| ✓ Maintenance  | ✓ Laundry   |
| ✓ Grocery stores, restaurants, food production, and food delivery                      | ✓ Elections   |
| ✓ Pharmacy   | ✓ Solid waste or hazardous materials management, response, and cleanup                          |
| ✓ Biomedical research  | ✓ Work requiring physical interaction with patients   |
| ✓ Behavioral health  | ✓ Dental care   |
| ✓ Medical testing and diagnostics  | ✓ Transportation and warehousing  |
| ✓ Home and community-based health care or assistance with activities of daily living   | ✓ Hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment |
| ✓ Family or child care   |   |
| ✓ Social services  |   |
| ✓ Public health  |   |
| ✓ Mortuary   |   |
| ✓ Critical clinical research, development, and testing necessary for COVID-19 response |   |

Beyond this list, the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdictions.

- 2. Verify that the eligible worker performs “essential work,”** meaning work that:

- Is not performed while teleworking from a residence; and
- Involves either:
  - regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or
  - regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work.

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**3. Confirm that the premium pay “responds to” workers performing essential work during the COVID-19 public health emergency.** Under the final rule, which broadened the share of eligible workers who can receive premium pay without a written justification, recipients may meet this requirement in one of three ways:

- Eligible worker receiving premium pay is earning (with the premium included) at or below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics’ [Occupational Employment and Wage Statistics](#), whichever is higher, on an annual basis; or
- Eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions; or
- If a worker does not meet either of the above requirements, the recipient must submit written justification to Treasury detailing how the premium pay is otherwise responsive to workers performing essential work during the public health emergency. This may include a description of the essential worker’s duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Premium pay may be awarded in installments or lump sums (e.g., monthly, quarterly, etc.) and may be awarded to hourly, part-time, or salaried or non-hourly workers. Premium pay must be paid in addition to wages already received and may be paid retrospectively. A recipient may not use SLFRF to merely reimburse itself for premium pay or hazard pay already received by the worker, and premium pay may not be paid to volunteers.



## Water & Sewer Infrastructure

The Coronavirus State and Local Fiscal Recovery Funds may be used to make necessary investments in water and sewer infrastructure. State, local, and Tribal governments have a tremendous need to address the consequences of deferred maintenance in drinking water systems and removal, management, and treatment of sewage and stormwater, along with additional resiliency measures needed to adapt to climate change.

Recipients may undertake the eligible projects below:

### PROJECTS ELIGIBLE UNDER EPA'S CLEAN WATER STATE REVOLVING FUND (CWSRF)

Eligible projects under the CWSRF, and the final rule, include:

- ✓ Construction of publicly owned treatment works
- ✓ Projects pursuant to implementation of a nonpoint source pollution management program established under the Clean Water Act (CWA)
- ✓ Decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage
- ✓ Management and treatment of stormwater or subsurface drainage water
- ✓ Water conservation, efficiency, or reuse measures
- ✓ Development and implementation of a conservation and management plan under the CWA
- ✓ Watershed projects meeting the criteria set forth in the CWA
- ✓ Energy consumption reduction for publicly owned treatment works
- ✓ Reuse or recycling of wastewater, stormwater, or subsurface drainage water
- ✓ Security of publicly owned treatment works

Treasury encourages recipients to review the EPA handbook for the [CWSRF](#) for a full list of eligibilities.

### PROJECTS ELIGIBLE UNDER EPA'S DRINKING WATER STATE REVOLVING FUND (DWSRF)

Eligible drinking water projects under the DWSRF, and the final rule, include:

- ✓ Facilities to improve drinking water quality
- ✓ Transmission and distribution, including improvements of water pressure or prevention of contamination in infrastructure and lead service line replacements
- ✓ New sources to replace contaminated drinking water or increase drought resilience, including aquifer storage and recovery system for water storage
- ✓ Green infrastructure, including green roofs, rainwater harvesting collection, permeable pavement
- ✓ Storage of drinking water, such as to prevent contaminants or equalize water demands
- ✓ Purchase of water systems and interconnection of systems
- ✓ New community water systems

Treasury encourages recipients to review the EPA handbook for the [DWSRF](#) for a full list of eligibilities.

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### ADDITIONAL ELIGIBLE PROJECTS

With broadened eligibility under the final rule, SLFRF funds may be used to fund additional types of projects— such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs — beyond the CWSRF and DWSRF, if they are found to be “necessary” according to the definition provided in the final rule and outlined below.

- ✓ Culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure
- ✓ Infrastructure to improve access to safe drinking water for individual served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination
- ✓ Dam and reservoir rehabilitation if primary purpose of dam or reservoir is for drinking water supply and project is necessary for provision of drinking water
- ✓ Broad set of lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, such as lead testing, installation of corrosion control treatment, lead service line replacement, as well as water quality testing, compliance monitoring, and remediation activities, including replacement of internal plumbing and faucets and fixtures in schools and childcare facilities

A “necessary” investment in infrastructure must be:

- (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise,
- (2) a cost-effective means for meeting that need, taking into account available alternatives, and
- (3) for investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life.

Please note that DWSRF and CWSRF-eligible projects are generally presumed to be necessary investments. Additional eligible projects generally must be responsive to an identified need to achieve or maintain an adequate minimum level of service. Recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs. Recipients should review the supplementary information to the final rule for more details on requirements applicable to each type of investment.

### APPLICABLE STANDARDS & REQUIREMENTS

Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

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## Broadband Infrastructure

The Coronavirus State and Local Fiscal Recovery Funds may be used to make necessary investments in broadband infrastructure, which has been shown to be critical for work, education, healthcare, and civic participation during the public health emergency. The final rule broadens the set of eligible broadband infrastructure investments that recipients may undertake.

Recipients may pursue investments in broadband infrastructure meeting technical standards detailed below, as well as an expanded set of cybersecurity investments.

### BROADBAND INFRASTRUCTURE INVESTMENTS

Recipients should adhere to the following requirements when designing a broadband infrastructure project:

1. **Identify an eligible area for investment.** Recipients are encouraged to prioritize projects that are designed to serve locations without access to reliable wireline 100/20 Mbps broadband service (meaning service that reliably provides 100 Mbps download speed and 20 Mbps upload speed through a wireline connection), but are broadly able to invest in projects designed to provide service to locations with an identified need for additional broadband investment. Recipients have broad flexibility to define need in their community. Examples of need could include:
  - ✓ Lack of access to a reliable high-speed broadband connection
  - ✓ Lack of affordable broadband
  - ✓ Lack of reliable service

If recipients are considering deploying broadband to locations where there are existing and enforceable federal or state funding commitments for reliable service of at least 100/20 Mbps, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

2. **Design project to meet high-speed technical standards.** Recipients are required to design projects to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100/20 Mbps and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds.

Treasury encourages recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections. Further, Treasury encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and co-operatives.



3. **Require enrollment in a low-income subsidy program.** Recipients must require the service provider for a broadband project that provides service to households to either:
  - ✓ Participate in the FCC's Affordable Connectivity Program (ACP)
  - ✓ Provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP

Treasury encourages broadband services to also include at least one low-cost option offered without data usage caps at speeds sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients are also encouraged to consult with the community on affordability needs.

#### **CYBERSECURITY INVESTMENTS**

SLFRF may be used for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards. This includes modernization of hardware and software.

#### **APPLICABLE STANDARDS & REQUIREMENTS**

Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.



## Restrictions on Use

While recipients have considerable flexibility to use Coronavirus State and Local Fiscal Recovery Funds to address the diverse needs of their communities, some restrictions on use of funds apply.

### OFFSET A REDUCTION IN NET TAX REVENUE

- **States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent.** If a state or territory cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than SLFRF, such as by enacting policies to raise other sources of revenue, by cutting spending, or through higher revenue due to economic growth. If the funds provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the Treasury.

### DEPOSITS INTO PENSION FUNDS

- **No recipients except Tribal governments may use this funding to make a deposit to a pension fund.** Treasury defines a “deposit” as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions connected to an eligible use of funds (e.g., for public health and safety staff). Examples of extraordinary payments include ones that:
  - ✗ Reduce a liability incurred prior to the start of the COVID-19 public health emergency and occur outside the recipient’s regular timing for making the payment
  - ✗ Occur at the regular time for pension contributions but is larger than a regular payment would have been

### ADDITIONAL RESTRICTIONS AND REQUIREMENTS

Additional restrictions and requirements that apply across all eligible use categories include:

- **No debt service or replenishing financial reserves.** Since SLFRF funds are intended to be used prospectively, recipients may not use SLFRF funds for debt service or replenishing financial reserves (e.g., rainy day funds).
- **No satisfaction of settlements and judgments.** Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding is itself not an eligible use. However, if a settlement requires the recipient to provide services or incur other costs that are an eligible use of SLFRF funds, SLFRF may be used for those costs.
- **Additional general restrictions.** SLFRF funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (e.g., uses of funds that

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undermine COVID-19 mitigation practices in line with CDC guidance and recommendations) and may not be used in violation of the Award Terms and Conditions or conflict of interest requirements under the Uniform Guidance. Other applicable laws and regulations, outside of SLFRF program requirements, may also apply (e.g., laws around procurement, contracting, conflicts-of-interest, environmental standards, or civil rights).



## Program Administration

The Coronavirus State and Local Fiscal Recovery Funds final rule details a number of administrative processes and requirements, including on distribution of funds, timeline for use of funds, transfer of funds, treatment of loans, use of funds to meet non-federal match or cost-share requirements, administrative expenses, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. This section provides a summary for the most frequently asked questions.

### TIMELINE FOR USE OF FUNDS

Under the SLFRF, funds must be used for costs incurred on or after March 3, 2021. Further, costs must be obligated by December 31, 2024, and expended by December 31, 2026.

### TRANSFERS

Recipients may undertake projects on their own or through subrecipients, which carry out eligible uses on behalf of a recipient, including pooling funds with other recipients or blending and braiding SLFRF funds with other sources of funds. Localities may also transfer their funds to the state through section 603(c)(4), which will decrease the locality's award and increase the state award amounts.

### LOANS

Recipients may generally use SLFRF funds to provide loans for uses that are otherwise eligible, although there are special rules about how recipients should track program income depending on the length of the loan. Recipients should consult the final rule if they seek to utilize these provisions.

### NON-FEDERAL MATCH OR COST-SHARE REQUIREMENTS

Funds available under the "revenue loss" eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

### ADMINISTRATIVE EXPENSES

SLFRF funds may be used for direct and indirect administrative expenses involved in administering the program. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury's [Compliance and Reporting Guidance](#). Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

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## REPORTING, COMPLIANCE & RECOUPMENT

Recipients are required to comply with Treasury's [Compliance and Reporting Guidance](#), which includes submitting mandatory periodic reports to Treasury.

Funds used in violation of the final rule are subject to remediation and recoupment. As outlined in the final rule, Treasury may identify funds used in violation through reporting or other sources. Recipients will be provided with an initial written notice of recoupment with an opportunity to submit a request for reconsideration before Treasury provides a final notice of recoupment. If the recipient receives an initial notice of recoupment and does not submit a request for reconsideration, the initial notice will be deemed the final notice. Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.

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### REVISIONS TO THE OVERVIEW OF THE FINAL RULE:

- January 18, 2022 (p. 4, p. 16): Clarification that the revenue loss standard allowance is “up to” \$10 million under the Replacing Lost Public Sector Revenue eligible use category; addition of further information on the eligibility of general infrastructure, general economic development, and worker development projects under the Public Health and Negative Economic Impacts eligible use category.
- March 17, 2022 (p. 18): Specified that provision of child nutrition programs is available to respond to impacts of the pandemic on households and communities.

## **ATTACHMENT “E”**

### **EL PASO MAKES: INNOVATION FACTORY POLICY**

**ATTACHMENT “F”**

**LEASE**