

STATE OF WYOMING
STATE LOAN AND INVESTMENT BOARD

Reimbursement Agreement

1. **Parties.** The parties to this Reimbursement Agreement (Agreement) are the State of Wyoming, Office of State Lands and Investments (OSLI), whose address is: 122 West 25th Street, Cheyenne, Wyoming, 82001, and the grant recipient, City of Laramie (Grantee), whose address is: P.O. Box C, Laramie, WY 82070.
2. **Purpose of Agreement.** The purpose of this Agreement is to set forth the terms and conditions by which OSLI shall disburse federal funds (Relief Funds) pursuant to section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) and 2020 Spec. Session 1, SEA No. 001, Section 2(b)(ii), (iii) and (x). OSLI is disbursing Relief Funds to reimburse expenditures approved by the State Loan and Investment Board (SLIB) and the Attorney General’s Office pursuant to Chapter 39 of the SLIB’s rules.
3. **Term of Agreement.** This Agreement is effective when all parties have executed it (Effective Date). The term of the Agreement is from the Effective Date through the end of the period during which the Inspector General for the U.S. Department of the Treasury may audit the State for the distribution of Cares Funds.
4. **Payment.**
 - A. OSLI shall disburse Relief Funds to the Grantee to reimburse expenditures approved by the SLIB and the Attorney General’s Office. Total reimbursements under this Agreement shall not exceed One Million Three Hundred Seventy Eight Thousand Five Hundred Sixty One and 00/100 USD (\$1,378,561). Disbursements from OSLI shall be made in within thirty (30) days after submission of an invoice.
 - B. Should the reimbursement requested by the Grantee fail to comply with all federal and State laws, State rules, and the terms and conditions set forth in this Agreement, OSLI shall not disburse Relief Funds.
5. **Responsibilities of Grantee.** The Grantee agrees:
 - A. The Grantee shall request reimbursement only for expenses described in the application attached to and incorporated into this Agreement as Attachment A, and approved by the SLIB and the Attorney General’s Office.
 - B. The Grantee shall submit a request for reimbursement accompanied by invoices and supported by adequate proof that such obligations are due and owing and have

been incurred for expenses that are eligible pursuant to this Agreement, SLIB rules, and all relevant federal and State laws. Relief Funds shall not be spent for any other purpose or project.

- C. The Grantee shall establish and maintain sufficient internal controls to ensure that Relief Funds are spent in accordance with this Agreement, SLIB rules, and all State and federal laws.
- D. If OSLI or the Inspector General for the U.S. Department of the Treasury determines that any of the Relief Funds were not utilized for an eligible expense under the CARES Act, the Grantee shall repay such funds immediately to the SLIB. In the event the Grantee does not repay the grant funds, the obligation shall be booked as a debt of the Grantee owed to the State of Wyoming. The Grantee further agrees to provide OSLI, upon request, a full and complete accounting as to the use of the Relief Funds; said accounting to be done in accordance with generally accepted accounting principles and shall be provided to the OSLI within a reasonable time.
- E. OSLI, or another approved designee of the SLIB, may perform an audit or examination of the books and records of the Grantee at any time and without notice, and that the SLIB or its designee may at any time without notice perform on-site visits and inspections of the project being funded.
- F. The Grantee shall comply with all applicable state and federal laws, rules, and regulations, including compliance with the provisions of Wyo. Stat. § 16-6-1001 and all applicable state procurement laws.
- G. The Grantee understands that the Legislature approved the distribution of Relief Funds for the purpose of “combating COVID-19 in Wyoming[.]” 2020 Spec. Session 1, SEA No. 001, Section 1(b)(i). The Grantee agrees that it will not remove any equipment or other items purchased pursuant to this Agreement from the State of Wyoming. This provision shall survive the expiration of the term of this agreement identified in Section 3.

6. Responsibilities of the Office. OSLI agrees:

- A. To disburse Relief Funds only as needed to discharge expenses incurred by the Grantee before December 15, 2020 and approved by the SLIB and Attorney General’s Office.

7. Special Provisions.

- A. **Payroll Expenditures.** For all expenditures for payroll, the following terms shall apply:

- i. The Grantee shall designate either the presumption method or the pro rata method of calculating payroll expenditures. The Grantee shall use the same method for all employees and all requests for reimbursement.
- ii. If the Grantee opts for the presumption method of calculating payroll, the Grantee shall provide to OS LI with its request for reimbursement:
 - a. A description of how the Grantee determined these employees spent more than 51% of their time “substantially dedicated to mitigating or responding to the COVID-19 public health emergency,” including a brief explanation of what duties/services the employees performed that were substantially dedicated to mitigating or responding to the public health emergency;
 - b. A certification that all requested payroll is for employees who spent 51% or more of their time substantially dedicated to responding to or mitigating the public health emergency; and
 - c. The supporting documentation for all payroll expenditures.
- iii. If the Grantee opts for the pro rata method of calculating payroll, the Grantee shall provide to OS LI with its request for reimbursement:
 - a. A description of how the Grantee determined the amount of time the employee spent “substantially dedicated to mitigating or responding to the COVID-19 public health emergency”;
 - b. For broad categories of employees, an explanation of what duties/services the employees performed that were substantially dedicated to mitigating or responding to the public health emergency;
 - c. For pre-existing employees, a description of how those duties are substantially different than previous duties; and
 - d. The supporting documentation for all payroll expenditures.
- iv. OS LI shall only disburse funds in compliance with the SLIB’s requirements on payroll expenditures.

B. Construction Expenditures. For all expenditures related to construction projects detailed in Attachment A, the following terms shall apply:

- i. Per the contingent approval by the SLIB, the Grantee shall require the

general contractor or each subcontractor for this Project to sign a bid containing a Completion Date Guarantee, attached to and incorporated into this Agreement as Attachment B. If the Grantee is unable to secure a bid with the Completion Date Guarantee, OS LI shall not disburse any funds related to construction projects.

- ii.** The Grantee shall include in the general contractor's contract either (1) the language of the Completion Date Guarantee, or (2) a provision requiring the general contractor to include the language of the Completion Date Guarantee in every subcontractor's contract. If the Grantee is unable to secure a contract satisfying this provision, OS LI shall not disburse any funds related to construction projects.
- iii.** As conditions for disbursing funds to the Grantee, the Grantee agrees:
 - a.** To make arrangements for appropriate professional supervision and management of the Project.
 - b.** To provide to the OS LI all project plans and specifications.
 - c.** To establish payment schedules providing that all work shall be completed prior to December 15, 2020.
 - d.** That OS LI is not responsible or liable for compliance with construction schedules or completion dates.
 - e.** That the Grantee shall be solely responsible for its compliance with all applicable state statutes, including but not limited to, state statutes regarding local preferences, procurement, accounting, and contractor retainage accounts.
 - f.** That OS LI is not responsible for construction supervision or management.
 - g.** To provide the OS LI with access to all information on all aspects of the project and make available for inspection such documents and reports on the progress of the work and on the results of tests of materials and workmanship or other information as may be requested by the OS LI.
 - h.** That in no event shall OS LI, SLIB, or the State of Wyoming be responsible for any project costs incurred after December 15, 2020.
- iv.** Prior to ordering a change to the project, the Grantee shall submit proposed changes to OS LI for review. OS LI shall have a minimum of five (5) business days to review the proposed change. Upon written approval of the OS LI, the Grantee shall execute an amendment or change order to affected

agreements. If the Grantee executes an amendment or change order without OS LI approval, OS LI reserves the right to withhold reimbursement for such a request until it is able to confirm the change complied with SLIB rules and all relevant federal and State laws. If the change does not comply with SLIB rules and all relevant federal and State laws, OS LI shall not disburse any funds for expenses related to the change.

8. General Provisions.

- A. Administration of Federal Funds.** The Grantee agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 C.F.R. Part 200, *et seq.*; the CARES Act; any additional requirements set forth by the federal funding agency; and all applicable regulations published in the Code of Federal Regulations.
- B. Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties shall be incorporated by written instrument, executed by all parties to this Agreement.
- C. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- D. Assignment Prohibited and Agreement Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Grantee shall not use this Agreement, or any portion thereof for collateral for any financial obligation without the prior written permission of OS LI.
- E. Audit and Access to Records.** The Inspector General for the U.S. Department of the Treasury, OS LI, and their representatives shall have access to any books, documents, papers, electronic data and records of the Grantee which are pertinent to this Agreement.
- F. Availability of Funds.** Each disbursement obligation under this Agreement is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Agreement, this Agreement may be terminated at the end of the period for which funds are available. OS LI shall notify the Grantee at the earliest possible time if this Agreement will or may be affected by a funding shortage. No penalty shall accrue to OS LI in the event this provision is exercised, and OS LI shall

not be obligated or liable for any future payments as a result of termination under this section.

- G. Compliance with Laws.** The Grantee understands that it may be subject to other audits or federal requirements in addition to those identified in this Agreement. The Grantee shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
- H. Entirety of Agreement.** This Agreement, consisting of nine (9) pages, Attachment A, consisting of twenty eight (28) pages, and Attachment B, consisting of one (1) page, represent the entire and integrated Agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Agreement and the language of any attachment or document incorporated by reference, the language of this Agreement shall control.
- I. Federal Audit Requirements.** The Grantee agrees that if it expends an aggregate amount of seven hundred fifty thousand dollars (\$750,000.00) or more in federal funds during its fiscal year, it must undergo an organization-wide financial and compliance single audit. The Grantee agrees to comply with the audit requirements of the U.S. General Accounting Office Government Auditing Standards and Audit Requirements of 2 C.F.R. Part 200, Subpart F. If findings are made which cover any part of this Agreement, the Grantee shall provide one (1) copy of the audit report to OSLI and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to OSLI's records.
- J. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes completely beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- K. Indemnification.**
- (i) If the Grantee is a private entity, the following provision applies: The Grantee shall release, indemnify, and hold harmless the State, the OSLI, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of the Grantee's failure to perform any of their duties and obligations hereunder or in connection with the negligent performance of the Grantee's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of the Grantee's negligence or other tortious conduct.

(ii) If the Grantee is a governmental or tribal entity, the following provision applies: Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.

L. Independent Contractor. The Grantee shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Agreement, the Grantee shall be free from control or direction over the details of the performance of services under this Agreement. The Grantee shall assume sole responsibility for any debts or liabilities that may be incurred by the Grantee in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Grantee or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or OSLI or to incur any obligation of any kind on behalf of the State of Wyoming or OSLI. The Grantee agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Grantee or the Grantee's agents or employees as a result of this Agreement.

M. Nondiscrimination. The Grantee shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Agreement.

N. Notices. All notices arising out of, or from, the provisions of this Agreement shall be in writing either by regular mail or delivery in person at the addresses provided under this Agreement.

O. Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

P. Sovereign Immunity and Limitations.

(i) If the Grantee is a private entity, the following provision applies: Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming, OSLI, and SLIB expressly reserve sovereign immunity by entering into this Agreement specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law,

enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.

- (ii) If the Grantee is a tribal or governmental entity, the following provision applies: The State of Wyoming, OSLI, and SLIB do not waive sovereign immunity by entering into this Agreement and the Grantee does not waive governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to W.S. §1-39-101, *et seq.*, and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign or governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.

- Q. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- R. Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- S. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- T. Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- U. Counterparts.** This Agreement may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Agreement. Delivery by the Grantee of an originally signed counterpart of this Agreement by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to OSLI.

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9. **Signatures.** The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The Effective Date of this Agreement is the date of the signature last affixed to this page.

STATE OF WYOMING, OFFICE OF STATE LANDS AND INVESTMENTS:

Jenifer Scoggin, Director

Date

GRANTEE:
City of Laramie

(Name and Title)

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Patrick Miller, Assistant Attorney General

Date