ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST

352 E. Camelback Rd.
Suite 200
Phoenix, AZ 85012
(602) 258-8850
(602) 926-0214 - Fax
www.aclpi.org

May 25, 2023

Via E-Mail and U.S. Mail:

Honorable Kimberly Yee, Treasurer
Office of the State Treasurer Arizona
1700 West Washington Street, #102
Phoenix, Arizona 85007

Jackie Harding, Deputy Treasurer, Operations
Arizona State Treasurer's Office
1700 West Washington Street
Phoenix, Arizona 85007
jackieh@aztreasury.gov

Re: Cease and Desist Letter Concerning the Interagency Service Agreement No., ISA-ARPA-122022-61, between the State of Arizona, Office of the Governor, and the Arizona State Treasurer's Office

Dear Treasurer Yee and Deputy Treasurer Harding:

We are writing to prevent an illegal expenditure of public funds.

On December 31, 2022 and January 1, 2023 (Governor Ducey's last day in office), the Arizona State Treasurer's Office (ASTO) and the Office of the Governor signed an Interagency Service Agreement authorizing the ASTO to use $50,000,000.00 of American Rescue Plan Act (ARPA) funding to administer a grant of up to an *extra* $3,500 per Empowerment Scholarship Account (ESA) for kindergarten recipients. (*See* No. ISA-ARPA-122022-61.) Under this program, families that send their children to private schools would receive approximately twice as much state funding as the state provides for children who attend public school. This grant program violates federal law governing the use of ARPA funding, among other constitutional prohibitions.

We write this letter in order to seek assurance that ASTO will cease and desist any implementation of this illegal program. It is our hope that—through such assurance—we can avoid the need for litigation. Please contact our office by June 9, 2023, and indicate whether ASTO agrees that no ARPA funds will be used to fund this grant program. In the absence of that assurance, we will be forced to utilize all available avenues, including litigation.

Interagency Service Agreement No. ISA-ARPA-122022-61

On December 31, 2022 and January 1, 2023—the holiday weekend before the change of administrations—the Arizona Governor's Office and ASTO signed Interagency Service Agreement No. ISA-ARPA-122022-61 (ISA). *See* Ex. 1, Interagency Service Agreement. This document memorializes an agreement to provide ASTO with up to $50,000,000.00 from ARPA, specifically the Coronavirus State and Local Fiscal Recovery Funds (SLFRF), to administer a new program, under which ASTO shall:

> Administer a reimbursement-based grant program open to recipients of an Empowerment Scholarship Account from the Arizona Department of Education for children in Kindergarten starting with the 2023 Academic year beginning July 1, 2023 who are using the ESA for the purpose of obtaining an education for their children and in response to and recovering from the COVID-19 pandemic. Grantee shall design a grant funds allocation methodology that provides a grant of up to $3,500 per ESA Kindergarten recipient and consult with [the Office of the Governor] on this allocation methodology prior to disbursing grant funds. Grantee shall collect information from grant program participants.

In a transparent attempt to manufacture a justification for spending ARPA funds to advance a private school agenda, the ISA states this program falls within the State Fiscal Recovery Fund Expenditure Category "2.25 Addressing educational disparities: students' academic, social, and behavioral services."[1] This purported justification does not withstand even the slightest scrutiny.

Arizona's ESA program allocates 90% of the state funding that otherwise would have been allocated to a student's public school to the ESA, allowing the student's parent or guardian to use the funds for expenses like private school tuition and home-schooling. A.R.S. § 15-2402(B)(4), (C). Currently, the average funding for kindergarten ESA recipients without a

[1] SLFRF reporting categories are listed in U.S. Dep't of the Treasury, *Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds*, 42–46 (2022), https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf [hereinafter *Compliance and Reporting Guidance*].

disability is between $4,000-$5,000 annually.[2] The illegal ISA extra-funding program would allocate *an additional* $3,500 per student *only* to families that receive ESAs for kindergarteners in future years. In doing so, the ISA would nearly double the amount of state funding spent per kindergarten student with an ESA, while the amount of state funding per kindergarten student attending public schools (including charter schools) would stay stagnant.[3] Providing thousands of extra dollars to families that will receive ESAs for kindergarteners would essentially fund full-day kindergarten for private-school students, while only funding half-day kindergarten for students attending public schools. For the reasons set forth below, that would be illegal.

Applicable Law: SLFRF Regulations

Congress authorized the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) as part of ARPA, to provide money to state, territorial, local, and tribal governments to support recovery from the COVID-19 pandemic. *Compliance and Reporting Guidance* at 2. Under ARPA, States may only use SLFRF monies to cover costs incurred in five categories:

> (A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
>
> (B) to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the State, territory, or Tribal government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
>
> (C) for the provision of government services up to an amount equal to the greater of
>
> > (i) the amount of the reduction in revenue of such State, territory, or Tribal government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the State, territory, or Tribal government prior to the emergency; or

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[2] *Approximate Annual ESA Funding 2022-2023 School Year*, Ariz. Dep't of Educ. (last visited May 23, 2023), https://www.azed.gov/sites/default/files/2023/02/ESA%20Funding%20Chart%20%202022.2023.pdf.

[3] This discrepancy is particularly egregious because the State only funds half-day kindergarten in Arizona. *See Kindergarten*, Ariz. Dep't of Educ. (last visited May 23, 2023), https://www.azed.gov/ece/kindergarten; A.R.S. § 15-901(A)(1)(a)(i).

> (ii) $10,000,000;
>
> (D) to make necessary investments in water, sewer, or broadband infrastructure; or
>
> (E) to provide emergency relief from natural disasters or the negative economic impacts of assistance for lost wages, or other immediate needs.

42 U.S.C. § 802(c)(1) (2022).

The only category of expenditure even arguably relevant here is the first: the use of SLFRF funds to respond to the "negative economic impacts" of the COVID-19 public health emergency, including "assistance to households." Within the umbrella of that category, U.S. Treasury Department regulations—which the ISA also references—have enumerated certain permissible uses of SLFRF funding, including:

> (ii) Responding to the negative economic impacts of the public health emergency for purposes including:
>
> (A) Assistance to households and individuals:
>
> . . .
>
> (11) A program, service, capital expenditure, or other assistance that is provided to a *disproportionately impacted* household, population, or community, including:
>
> . . .
>
> (v) Services to address educational disparities.

31 C.F.R. § 35.6(b)(3)(ii)(A)(11)(v) (emphasis added).

The structure of the regulations makes clear that "services to address educational disparities" should be targeted towards disproportionately impacted households, populations, or communities. *See also* Coronavirus State and Local Fiscal Recovery Funds, 87 Fed. Reg. 4338, 4359 (Jan. 27, 2022) (codified at 31 C.F.R. pt. 35) ("The following activities remain enumerated eligible uses *for disproportionately impacted households*: . . . programs or services that address educational disparities . . . .") (emphasis added).

The Final Rule explains that "disproportionately impacted households" have "experienced a disproportionate, or meaningfully more severe, impact from the pandemic," because "pre-existing disparities in health and economic outcomes magnified the impact of the COVID-19 public health emergency on certain households and communities." *Id.* at 4347–48.

Certain households or populations are presumptively "disproportionately impacted" if they live in a qualified census tract,[4] receive services from Tribal governments, reside in or receive services from the territories, are low-income,[5] or qualify for certain public benefits.[6] 31 C.F.R. § 35.6(b)(2)(iii)(A).

States may also identify other disproportionately impacted classes, provided they can support the determination that COVID-19 resulted in disproportionate economic harm to the classes. 87 Fed. Reg. at 4347, 4349. States can identify these disproportionately impacted classes by comparing the disparately impacted classes to the typical or average impact of the pandemic, utilizing quantitative or qualitative sources. *Id.* at 4349.

The Final Rule explains that expenditures "addressing educational disparities in disproportionately impacted communities" are meant to "address disparities in educational outcomes that predate the pandemic and amplified its impact on underserved students." *Id.* at 4365. Uses include but are not limited to:

> [I]ncreasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, summer education and enrichment programs, and supports for students' social, emotional, and mental health needs. This also includes responses aimed at addressing the many dimensions of resource

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[4] A qualified census tract is one "in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent." 26 U.S.C. § 42(d)(5)(B)(ii)(I); *see* 31 C.F.R. § 35.3.

[5] A low-income household is defined as a household with:

> (1) [i]ncome at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or (2) [i]ncome at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

31 C.F.R. § 35.3.

[6] The public benefits are: "Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq*.), the Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*), Free and Reduced Price School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773), Medicare Part D Low-income Subsidies (42 U.S.C. 1395w-114), Supplemental Security Income (42 U.S.C. 1381 *et seq.*), Head Start (42 U.S.C. 9831 *et seq.*), Early Head Start (42 U.S.C. 9831 *et seq.*), the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786), Section 8 Vouchers (42 U.S.C. 1437f), the Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*), Pell Grants (20 U.S.C. 1070a), and, if SLFRF funds are to be used for services to address educational disparities, Title I eligible schools." 31 C.F.R. § 35.6(b)(2)(iii)(A).

> equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—in order to close long-standing gaps in educational opportunity.

Id. at 4375.

The rule's enumerated list of uses is non-exhaustive. *Id.* at 4339–40. An expense is also eligible for SLFRF funds if the State "identifies a harm or impact to a beneficiary or class of beneficiaries *caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm*." 31 C.F.R. 35.6(b)(1)(i) (emphasis added). An expenditure "responds to a harm" if "it is reasonably designed to benefit the beneficiary or class of beneficiaries" harmed *and* is "related and reasonably proportional to the extent and type of harm or impact experienced." 31 C.F.R. 35.6(b)(1)(ii).

This ISA grant program violates the SLFRF regulations.

The ISA purports to allocate funds to "addressing educational disparities: students' academic, social, and behavioral services"—a category of assistance that Treasury Rules require be directed at disproportionately impacted households, populations, or communities.[7] However, providing increased funding *only* for kindergarten students who are already receiving ESA funding neither provides assistance to "disproportionately impacted" households nor addresses "educational disparities."

First, Arizona's ESA program is available to all incoming kindergarten students. *See* A.R.S. § 15-2401.01. Because the ISA is available to *any* ESA recipient entering kindergarten over the *next three* academic years, it is obviously not targeted towards disproportionately impacted households. Further, many households that benefit from this program are not presumptively disproportionately impacted under the regulations. *See* 31 C.F.R. § 35.6(b)(2)(iii)(A) (discussing presumptively disproportionately impacted persons or communities). An analysis of the zip code distribution of applications for ESA vouchers found

[7] To be sure, the ISA *claims to be* authorizing the use of funds consistent with the SLFRF Expenditure Category "2.25 Addressing educational disparities: students' academic, social, and behavioral services." U.S. Treasury Department Guidance characterizes the expenditure code listed in the ISA—"2.25 Addressing educational disparities: students' academic, social, and behavioral services"—as responding to "negative economic impacts" and as "assistance to households." *Compliance and Reporting Guidance* at 42–43. However, that category falls within 31 C.F.R. § 35.6(b)(3)(ii)(A)(11), which requires that the program be directed toward "to a *disproportionately impacted* household, population, or community." (Emphasis added.)

that about 45% of all applications come from parents or guardians residing in zip codes that have a median household income of $80,000 or more, more than 30% greater than the state's median household income ($61,529).[8] This study also found that "the program's primary beneficiaries are students from wealthier families . . . and . . . 96.5% of those students have good access to well-performing public schools." *Id.* at 1.

It is also appropriate to consider the context of Governor Ducey's prior inappropriate uses of federal COVID relief funds. This context is important for several reasons. First, it shows that while the federal programs provide significant flexibility, that flexibility is not unlimited. Second, it shows that the prior administration has a history of trying to push that flexibility beyond its legally permissible limits. In 2021 the U.S. Treasury Department deemed two of Arizona's grant programs ineligible for SLFRF funds. One of those programs involved establishing an ESA program with SLFRF funds to provide up to $7,000 per student for tuition or other educational costs to allow students to attend private schools if their current school was requiring the use of face coverings. The State of Arizona argued that program was eligible for SLFRF funds because it addressed educational disparities and educational hardships caused by the pandemic.[9] The State further attempted to justify the program by arguing "disadvantaged communities bear the brunt of overbearing measures and the state wants to ensure that low-income students are not disproportionately affected by mask mandates rules and school closures."[10] In response, the U.S. Treasury Department deemed the program ineligible not only because it undermined the pandemic response, but also because Treasury "had concerns" regarding how that universal private school voucher program "relates to the objective of benefitting low-income families and students."[11] These concerns are only magnified here.

For the State to identify a group as "disproportionately impacted" on some basis not specifically enumerated in federal regulations, it must support the determination that COVID-19 resulted in disproportionate economic harm to that group. 87 Fed. Reg. at 4349. The ISA

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[8] Grand Canyon Inst., *Universal Voucher Applications Analysis* 2 (2022), https://grandcanyoninstitute.org/wp-content/uploads/2022/11/GCI_Analysis_Universal-Vouchers-Help-High-Income-Earners-the-Most_Nov_6_2022.pdf.

[9] Howard Fischer, *Ducey: Arizona Use of COVID Cash in Schools Isn't Illegal*, Herald Rev. (Nov. 4, 2021), https://www.myheraldreview.com/news/coronavirus/ducey-arizona-use-of-covid-cash-in-schools-isnt-illegal/article_22a6da20-3dcf-11ec-95a0-8b463611c820.html.

[10] Maureen Breslin, *Arizona Defies Demand it Stop Using COVID-19 Relief Money for Anti-Mask Schools*, The Hill (Nov. 4, 2021), https://thehill.com/homenews/state-watch/580274-arizona-defies-demand-it-stop-using-covid-19-relief-money-for-anti-mask/.

[11] Letter from Kathleen B. Victorino, U.S. Dep't Treasury to Jason Mistlebauer, Governor's Office of Strategic Planning & Budgeting (Jan. 14, 2022), available at: https://media.kjzz.org/s3fs-public/2022.01.14_-_AZ_response_-_Final_1.pdf.

grant program would provide extra funding to students entering kindergarten for the upcoming three school years—from 2023-2024 through 2025-2026. Incoming kindergarten students in the 2023-2024 school year would have been two years old when the COVID pandemic started in March 2020; incoming 2025-2026 kindergarten students were not even born at the pandemic's inception. It is extremely unlikely that even the oldest of these students missed *instructional time* because of school closures. And no such argument regarding the younger children can be made with a straight face. Further, as explained above, no argument can be supported that children who will receive ESAs in future years were *disproportionately impacted* (economically or otherwise) by the pandemic.

For similar reasons, this expenditure would not address educational disparities. If anything, it would exacerbate educational disparities. Students already participating in the ESA program, many of whom already have access to well-performing schools, would receive more scarce educational resources than the State provides for students attending public school. Therefore, the expenditure category identified by the ISA does *not* support and is not consistent with this use of SLFRF monies.

An expenditure is potentially eligible under SLFRF *only if* it responds to harm that was exacerbated by the public health emergency or its negative economic impact. No argument can be made that the class of beneficiaries that is the subject of the ISA qualifies. Further, because of the extreme youth of these putative funding recipients, COVID-related educational disruptions and harms largely (perhaps entirely) predate these future students' educational experiences. As a result, for many reasons, this funding program is neither "related" to nor "reasonably proportional to" educational disparities these future students suffered during the pandemic. *See* 31 C.F.R. § 35.6(b)(1)(ii). Nor did these future kindergartners—whose education postdates the pandemic emergency—experience an educational "harm or impact" that was "caused or exacerbated by the public health emergency or its negative economic impacts." *See* 31 C.F.R. §35.6(b)(1)(i). In sum, no support exists for a claim that families of future kindergartners that choose to attend private school were disproportionately impacted by the pandemic or suffered unique economic harms such that the State must nearly double the funding provided to private school students using SLFRF funds in order to address a supposed "educational disparity."

For all of the reasons stated above, this expenditure does not respond to a harm exacerbated by the COVID-19 emergency or its negative economic impact and is an ineligible and illegal use of SLFRF funds.[12]

Remedial Actions

The grant program described in the ISA exposes Arizona and its taxpayers to consequences such as the Federal government clawing back this funding after it is spent. SLFRF requires a State that fails to comply with § 802(c) to repay any misused funds to the U.S. Treasury Department. 42 U.S.C. § 802(e).

To resolve this case without the need for litigation, ASTO must provide assurance by June 9, 2023, that no ARPA funds will be dispersed in support of this grant program. We are also copying the Arizona Attorney General and the Solicitor General on this letter so that they are informed of the illegality of this program. Under A.R.S. § 35-212(A)(1), the Attorney General has the authority to bring an action to "[e]njoin the illegal payment of public monies," including this grant program. *See also* A.R.S. § 35-212(B) (enabling the Attorney General to recover illegally paid public monies against the public official who ordered or caused an illegal payment), (C) (public official may be personally liable for illegal payments of public monies).

Representatives from Arizona Center for Law in the Public Interest are available to meet with you, representatives from the Attorney General's Office, and the Governor's Office to discuss these issues. We sincerely hope that we can reach a mutually satisfactory agreement without the need to involve the courts. We ask that you respond to this letter by no later than June 9, 2023. If you have any questions concerning this request, please call me at (602) 258-8850 or email me at Danny@aclpi.org.

Sincerely,

Daniel J. Adelman

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[12] While implementation of the program would unequivocally violate federal law, it also would likely violate numerous constitutional provisions, including Arizona's Gift Clause, the General and Uniform Clause, and the Equal Protection Clause. *See, e.g.,* Ariz. Const. art. IX, § 7; art. 11, § 1 (requiring the State to establish and maintain "a general and uniform public school system"); U.S. Const. amend. XIV, § 1. It is our hope that you will promptly provide assurances that no ARPA funds will be used to fund the program that is the subject of the ISA. However, if we are forced to litigate to prevent this misuse of public funds, we will utilize all federal and State theories supported by law.

cc:

The Honorable Kris Mayes
Attorney General
Office of the Attorney General
2005 N. Central Ave.
Phoenix, AZ 85004

The Honorable Joshua Bendor
Solicitor General
Office of the Attorney General
2005 N. Central Ave.
Phoenix, AZ 85004

Enclosure (1)

INTERAGENCY SERVICE AGREEMENT
NO. ISA-ARPA-122022-61

Between the

STATE OF ARIZONA,
THE OFFICE OF THE GOVERNOR

And the

Arizona State Treasurer's Office (ASTO)

WHEREAS, A.R.S. § 41-101.01 authorizes the Office of the Governor to execute and administer contracts and is charged with the responsibility of administering the Coronavirus State and Local Fiscal Recovery Funds allocated to the State of Arizona. The Catalog of Federal Domestic Assistance (CFDA)/Assistance Listing for all activity pursuant to this agreement is 21.027.

WHEREAS, A.R.S. § 35-148(A) authorizes Interagency Service Agreements between budget units to provide reimbursement for services performed, or for the advancement of funds for services to be performed, and authorizes the funds to be credited to the appropriate account for the budget unit performing the services.

THEREFORE, it is agreed that the Arizona Office of the Governor ("GVA") shall provide funding to the ASTO ("Grantee") with SAM.gov Unique Entity ID (UEI) of DATPVQ6ZQ6W4 for services under the terms of this Interagency Service Agreement ("Agreement").

I. PURPOSE OF AGREEMENT

The purpose of this Agreement is to authorize use and provide funds from the American Rescue Plan Act ("ARPA"), specifically the Coronavirus State and Local Fiscal Recovery Fund, to Grantee to support COVID-19 related activities in accordance with State Fiscal Recovery Fund Expenditure Category:

- 2.25 Addressing educational disparities: students' academic, social, and behavioral services.

The Catalog of Federal Domestic Assistance (CFDA)/Assistance Listing for all activity pursuant to this agreement is 21.027 which provide funds from the American Rescue Plan Act ("ARPA"), specifically the Coronavirus State and Local Fiscal Recovery Fund, in support of COVID-19 related activities in accordance with allowable State and Local Fiscal Recovery Fund Expenditure Categories as outlined in the most current published Guidance (Appendix 1: Expenditure Categories, Treasury's Compliance and Reporting Guidance, State and Local Fiscal Recovery Fund) found at https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf

Under this Agreement, the Grantee's services must be provided in compliance with the rules of the ARPA. The most current published rules (Treasury's Coronavirus SLFRF Final Rule) can be found at: https://www.federalregister.gov/documents/2022/01/27/2022-00292/coronavirus-state-and-local-fiscal-recovery-funds

II. TERM OF AGREEMENT, TERMINATION AND AMENDMENTS

This Agreement shall be effective January 1, 2023 and shall terminate on December 31, 2024, contingent upon funding and the eligibility of activities and proposed expenditures.

Grantee may terminate this Agreement at any earlier time by providing written notice to the GVA at least thirty (30) days prior to the termination date. GVA agrees that regardless of its termination date with Grantee, Grantee may use the funds distributed under this Agreement to pay for any unpaid services pursuant to this Agreement obligated prior to the date of termination. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein.

Amendments to this Agreement shall be made in writing and signed by both parties.

III. DESCRIPTION OF SERVICES

Grantee shall:

A. Administer a reimbursement-based grant program open to recipients of an Empowerment Scholarship Account from the Arizona Department of Education for children in Kindergarten starting with the 2023 Academic year beginning July 1, 2023 who are using the ESA for the purpose of obtaining an education for their children and in response to and recovering from the COVID-19 pandemic. Grantee shall design a grant funds allocation methodology that provides a grant of up to $3,500 per ESA Kindergarten recipient and consult with GVA on this allocation methodology prior to disbursing grant funds. Grantee shall collect information from grant program participants.
B. As part of the grant program, grant program participants may use grant funds for the eligible expenses as listed in A.R.S 15-2402 between July 2023 and December 2026
C. Enter into an agreement with the Arizona Department of Education and other state agencies as needed to assist in administering the grant.
D. Agree that questions regarding the appropriate use of the funds shall be resolved by mutual written agreement between the Grantee and the Governor's Office.
E. Maintain a tracking of total grant funding requests and disbursements.
F. As required by federal grant funding regulations, maintain all associated documentation for a period of 5 years.

IV. MANNER OF FINANCING

The GVA shall:

A. Provide to Grantee a total award amount of up to $50,000,000.00 for activities outlined in Section III. Up to 5% of the total grant shall be used by Grantee to cover administrative expenses including hiring staff and personnel costs.
B. Work with the Grantee to establish a cadence whereby GVA will transfer funding to Grantee to then disburse to grant program participants for eligible expenses as outlined in Section III.
C. Any unused funding pursuant to this agreement at the termination date shall be transferred back to the Office of the Governor and the remaining balance of the award de-obligated.

Grantee shall:

A. Request funds to disburse for eligible grant program expenses according to the cadence established with the GVA, in compliance with and as required by the Cash Management Improvement Act and *State of Arizona Accounting Manual* (SAAM) 7055.
B. Agree that questions regarding the appropriate use of the funds shall be resolved by mutual agreement between the Grantee and the GVA.
C. Agree that all grant funds received from the GVA must remain in a singular dedicated fund and all expenditures made must be directly from the same for tracking purposes.
D. Agree to comply with the provisions of all applicable acts, regulations, and assurances.
E. Not charge any payroll expenses tied to Personnel Board Pro-Rata Charges related to statewide Human Resources support or Information Technology Pro Rata Charges related to statewide Information Technology Planning (AFIS object codes 6183 or 6185, or equivalent coding).

F. Not charge any payroll expenses tied to Annual Leave Payout (AFIS object code 6047, or equivalent coding) or prior period time record adjustments if they relate to payroll from prior to the effective date of this Agreement.
G. Assure that any expenses reimbursed under this Agreement have not been or will not be reimbursed under any other federal program.

V. REPORTING REQUIREMENTS

Grantee shall provide a quarterly report to the Office of the Governor that lists all grant program participants and summarizes quarterly and cumulative funding disbursed by category (e.g., personnel expenses, PPE expenses, etc). Reporting shall be submitted via eCivis for all activities performed and expenditures incurred under this Agreement as approved according to Section III above.

Grantee shall report the following metrics in a format instructed by GVA.

Quarterly programmatic reports will be due as follows:

March 31st for the activity performed December, January, and February
June 30th for activity performed March, April, and May
September 30th for activity performed June, July, and August
December 30th for activity performed September, October, and November

VI. APPLICABLE LAW

In accordance with A.R.S. § 41-2501, *et seq.*, and Arizona Administrative Code R2-7-101, *et seq.*, this Agreement shall be governed and interpreted by the laws of the State of Arizona and the Arizona Procurement Code.

VII. NON-AVAILABILITY OF FUNDS

In accordance with A.R.S. § 35-154, every payment obligation of the GVA under the Agreement is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the GVA at the end of the period for which funds are available. No liability shall accrue to the GVA in the event this provision is exercised, and the GVA shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

VIII. APPLICABILITY OF PART 200 UNIFORM REQUIREMENTS

Grantee agrees to comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F. R. Part 200.

IX. AUDIT

In accordance with A.R.S. § 35-214, Grantee shall retain and shall contractually require each contractor and subcontractor to retain all data, books and other records ("records") relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the GVA at reasonable times. Upon request, Grantee shall produce the original of any or all such records.

X. CONFLICT OF INTEREST

In accordance with A.R.S. § 38-511, the GVA may within three years after execution cancel the Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the GVA, at any time while the Agreement is in effect, becomes an employee or agent or any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the matter of the Agreement.

XI. FUND MANAGEMENT

The Grantee must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. The Grantee must manage funds according to applicable federal regulations for administrative requirements, cost principles and audits.

The Grantee must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are:

- Financial Management
- Procurement
- Personnel
- Property
- Travel

A system is adequate if it is: 1) written; 2) consistently followed - it applies in all similar circumstances; and 3) consistently applied – it applies to all sources of funds. The Grantor reserves the right to review all business systems policies.

XII. SAM REGISTRATION

Each successful recipient who is awarded $25,000 or more must provide the following prior to an Agreement being executed: (a) Unique Entity Identifier (UEI) number for the fiscal agent; and (b) proof of current registration in the SAM database. Additionally, SAM registration must be maintained for the term of the Agreement. SAM registration information may be found at https://sam.gov/content/home.

XIII. FFATA REPORTING REQUIREMENTS

In compliance with the Federal Funding Accountability and Transparency Act of 2006 Reporting Requirements, Pub. L. No. 109-282, 120 Stat. 1186, as amended by Section 6202 (a) of Pub. L. No. 110-252, the Grantee is required to provide information. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) to be made available to the public via a single, searchable website, which is www.USASpending.gov.

XIV. OTHER

It is agreed that the Parties to this Agreement have participated fully in the negotiation and preparation of the Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The Parties acknowledge they have been advised by counsel or have had the opportunity to be advised by counsel, in the negotiation and execution of the Agreement.

XV. NOTICES

Grantee shall address all notices relative to this Agreement to the GVA to:

Rosa Ellis
Governor's Office of Strategic Planning & Budgeting
1700 W. Washington Street
Phoenix, Arizona 85008
rellis@az.gov

The Arizona Office of the Governor shall address all notices relative to this Agreement to Grantee:

Jackie Harding
Deputy Treasurer, Operations
Arizona State Treasurer's Office
1700 W. Washington Street

Phoenix, Arizona 85007
jharding@aztreasury.gov

IN WITNESS WHEREOF, the parties hereto agree to execute this Agreement.

ARIZONA STATE TREASURER'S OFFICE

12/31/2022

Jackie Harding | Date
Deputy Treasurer, Operations
Arizona State Treasurer's Office

THE ARIZONA OFFICE OF THE GOVERNOR

12/31/2022

Matthew Gress | Date
Director
Governor's Office of Strategic Planning & Budgeting

Daniel Ruiz (Jan 1, 2023 08:05 MST)

01/01/2023

Daniel Ruiz | Date
Chief of Staff

ISA-ARPA-122022-61

Final Audit Report 2023-01-01

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