

## Community Card Customer Agreement

THIS AGREEMENT (the "Agreement") is made effective as of November 28, 2022 (the "Effective Date") by and between Yiftee Inc., a Delaware corporation, with an address at 325 Sharon Park Drive #215, Menlo Park, CA 94025 ("Yiftee") and City of Upland with an address at 460 N. Euclid Ave. Upland, CA 91786 ("Customer"). The parties agree as follows:

### 1. Definitions.

1.1 "Merchant" means a merchant, prospect or other contact that may be using or desire to use Yiftee Services to redeem eGifts.

1.2 "Participant" means a Merchant who has opted to participate in a Community Card by running an Activation Card and agreeing to the Merchant Agreement.

1.3 "Yiftee Services" means Yiftee's gift-giving platform. It is the technology foundation for Community Cards.

1.4 "Purchaser" means a person or entity that purchases or redeems eGifts.

1.5 "eGift" means a digital virtual gift voucher used as payment for goods or services at a Participant.

1.6 "Offer" or "Offers" mean specific benefits that Participants provide to consumers who use their Community Cards in their store, as determined by the Participants and posted on their eGift Card web page.

### 2. Merchant Enrollment.

#### 2.1 Merchant Enrollment Obligations

(a) Customer will collect a set of Merchants who have elected to participate in the Yiftee Services. Merchants must all be located in the same state in the USA, due to varying gift card laws by state. Each Merchant must agree to the Yiftee Community Card Merchant Agreement located on the [Yiftee.com](https://www.yiftee.com) website. Merchants who have not agreed to the Merchant Agreement will not be able to utilize the Yiftee Services to redeem eGifts. Customer will upload into the Yiftee Services or provide the names of the Merchants who intend to participate to Yiftee. Upon the agreed upon launch date, the billing for the Yiftee Services will begin ("Commencement Date"). This billing will include the agreed-upon cost for each Participant or group thereof as defined in Appendix A.

(b) Yiftee will provide to Customer or directly to Merchants, upon receipt of the set of Merchant names in 2.1a, a set of unique Activation Cards to be run by each Merchant. Customer will inform Merchants of their individual Activation Card and provide instructions on its use. Additionally, Customer will inform Merchants that running the Activation Card implies consent to the Merchant Agreement located on the [Yiftee.com](https://www.yiftee.com) website.

(c) As Merchants run the Activation Cards, they will be included in the set of Merchants enabled to participate in the Yiftee Services, i.e. the Participants. Participant may also post their Offers to be available for eGift Card holders who redeem gifts in their stores.

(d) Yiftee will bill Customer or Merchants as described in Appendix A. Customer can add or remove Participants and fees will be adjusted accordingly, if applicable. There will be no retroactive adjustments allowed by Yiftee (that is, a cancelled Participant's billing obligation will result in that Participant's cost to Customer, as defined in Appendix A, to be eliminated beginning only on the next annual billing cycle). A Participant may be added to the list of Participants at any time ("Enrollment Time"), with billing adjustment for said Participant to begin immediately and to be included in the current month's billing.

(e) Each party shall comply with good, ethical and moral business practices and all applicable laws and regulations in engaging in any activities here under. Yiftee shall also comply with federal regulations outlined in Appendix B of this Agreement.

(f) Fees and payment terms applicable to the subject matter here under shall be as set forth in Appendix A. Customer is not entitled to compensation other than what is described in Appendix A.

(g) Customer is responsible and liable for any disputes or liability arising out of its relationships with Merchants and Participants, except with respect to any liability of Yiftee under this agreement.

## 2.2 Yiftee Materials.

Yiftee may provide Customer with certain materials for use in conjunction with promoting the Yiftee Services here under ("Yiftee Materials"). No rights or licenses, express or implied, are granted in those Yiftee Materials or otherwise, except as expressly and unambiguously set forth in this Agreement.

## 2.3 Limited Licenses.

Subject to the terms and conditions of this Agreement, Yiftee hereby grants to Customer, a non-exclusive, non-transferable, non-assignable, non-sublicensable right and license to access and use the Yiftee Services and Yiftee Materials solely for the purposes of Customer's performance of this Agreement.

## 2.4 Trademark License.

Subject to the terms and conditions of this Agreement, Yiftee hereby grants Customer and Customer hereby grants Yiftee a non-exclusive, non-transferable, non-assignable, non-sublicensable, royalty-free license to use Yiftee's or Customer's name, trade names, trademarks, service marks, and logos (collectively, a party's "Marks") solely in connection with Customer's and Yiftee's promotion and marketing of the Yiftee Services, subject to written usage guidelines, if any, made mutually available.

**3. Chargebacks.** When purchasing eGifts using Purchasers' credit cards or other forms of payment using the Yiftee "Order Desk" functionality or any purchase using Customer's Community Card account with a third party credit card that is not Customer's, Customer is responsible for verifying that the Purchaser owns the payment instrument and has authority to use it for said purchase. Should Yiftee receive a Chargeback, Yiftee will attempt to cancel any outstanding value on the eGift purchased and Customer will be liable for any remaining balance and fees incurred by Yiftee. Customer is not liable for Chargebacks for gifts purchased through the normal Yiftee eGift process where Customer is not making the gift purchase.

**4. Ownership.** As between the parties, Yiftee owns all right, title and interest in and to the Yiftee Services, Yiftee's Marks and the Yiftee Materials. Customer owns all right, title and interest in and to Customer's Marks.  
**5. Warranties Disclaimer.** YIFTEE AND ITS LICENSORS MAKE NO WARRANTIES TO CUSTOMER, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF

MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING OUT OF USAGE OR TRADE, COURSE OF DEALING AND COURSE OF PERFORMANCE.

## **6. Liability .**

6.1 Mutual Indemnification. Each Party hereby agree to indemnify, defend, save, and hold the other and their respective officers, agents, and employees, free and harmless from and against any claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries arising out of, pertaining to, or in any manner connected with the indemnifying party's sole negligence or willful misconduct related to the performance of this Agreement.

6.2 Limitation of Liability. EXCEPT FOR LIABILITY ARISING UNDER SECTION 6.1 AND SECTION 8, NEITHER PARTY (NOR ITS LICENSORS) WILL BE LIABLE OR OBLIGATED WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES WHATSOEVER, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA OR USE AND IN NO EVENT SHALL EITHER PARTY'S LIABILITY EXCEED THE GREATER OF \$500 OR THE AMOUNTS PAID AND/OR PAYABLE BY YIFTEE TO CUSTOMER (AND/OR BY CUSTOMER TO YIFTEE, IF PAYMENTS ARE PAYABLE BY CUSTOMER TO YIFTEE IN ACCORDANCE WITH PROPOSAL) HEREUNDER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE APPLICABLE CLAIM.

6.3 Insurance. Yiftee shall obtain insurance of the types and in the amounts described below and satisfactory to the Customer.

(a) Commercial General Liability Insurance. Yiftee shall maintain occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than two million dollars (\$2,000,000) per occurrence and the general aggregate limit not less than four million dollars (\$4,000,000). Such insurance shall:

1. Include the Customer, its officials, officers, employees, agents, and consultants as additional insureds with respect to the use of the Property and shall contain no special limitations on the scope of coverage or the protection afforded to the additional insureds;
2. Be primary with respect to any insurance or self-insurance programs covering the Customer, its officials, officers, employees, agents and consultants; and
3. Contain standard separation of insured provisions.
4. Contain a waiver of subrogation that waives any right the insurer has against Customer for any claims or suits.

(b) Workers' Compensation Insurance. Yiftee shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000 per occurrence.

(c) Certificates of Insurance. Yiftee shall furnish the Customer with properly executed certificates of insurance and, if requested by the Customer in writing, certified copies of endorsements and policies, which clearly evidence all insurance required under this Agreement and provide that such insurance shall be not canceled, allowed to expire or be materially reduced in coverage, except on thirty (30) days'

prior written notice to the Customer. The Customer shall have the sole discretion to determine whether the certificates and endorsements presented comply with the provisions of this Agreement.

(d) **Coverage Maintenance.** Yiftee shall replace certificates, policies and endorsements for any insurance expiring prior to the termination of this Agreement. Unless otherwise provided for in this Agreement, Yiftee shall maintain such insurance from the execution of this Agreement until the termination of the Agreement.

(e) **Licensed Insurer.** Yiftee shall place such insurance with insurers having A.M. Best Company ratings of no less than A:VIII and licensed to do business in California, unless otherwise approved, in writing, by the Customer.

## **7. Term and Termination.**

7.1 **Term.** This Agreement shall be effective as of the Effective Date and shall continue in full force on an annual period from the Effective Date, and thereafter shall automatically renew annually, unless and until either party terminates this Agreement pursuant to Section 6.2.

7.2 **Termination.**

(a) Either party may, at its option, terminate this Agreement upon thirty (30) days written notice to the other party for any reason or for no reason whatsoever.

(b) Either party may terminate this Agreement if the other party materially breaches a term of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice of such breach from the non-breaching party.

(c) Participants are obligated to honor all outstanding eGifts issued by Yiftee for the entire duration of those eGift's validity periods. Termination does not relieve Participants from honoring conditions outlined in the Merchant Agreement.

7.3 **Effect of Termination.** Upon any termination: (a) Customer shall immediately cease all promotion of the Yiftee Services and shall immediately return to Yiftee, or at the option of Yiftee, destroy, all Confidential Information (as defined below) of Yiftee disclosed to Customer, Yiftee Materials, and any Yiftee Services, hardware and software provided to Customer here under, (b) Yiftee shall immediately return to Customer, or at the option of Customer, destroy, all Confidential Information of Customer disclosed to Yiftee here under, and (c) all licenses granted under this Agreement shall immediately cease. The following Sections shall survive termination and remain in effect 1, 4, 5, 6, 7.3, 8 and 9. Any termination of this Agreement shall be without prejudice to any other rights or remedies available under this Agreement or at law.

**8. Confidentiality.** Because of this Agreement, the parties may have access to information that is confidential to the disclosing party ("Confidential Information"). Confidential Information shall include, without limitation, Purchaser lists and information relating to the parties' products and pricing and all information designated as confidential by the disclosing party at the time of disclosure. A party's Confidential Information shall not include any information which (i) becomes generally publicly available through no wrongful act or omission of the receiving party; (ii) is lawfully acquired by the receiving party from a third party without any breach of a confidentiality obligation; or (iii) is independently developed

without use of or reference to the disclosing party's Confidential Information. Each party agrees to maintain the confidentiality of the other party's Confidential Information using the same degree of care that it uses with regard to its confidential information of like nature, but in no event less than reasonable care, and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. If required by law, the receiving party may disclose Confidential Information of the disclosing party, but will give adequate prior notice of such disclosure to the disclosing party to permit the disclosing party to intervene and to request protective orders or other confidential treatment therefor. The parties acknowledge that money damages will not be an adequate remedy if this Section 8 is breached and, therefore, either party may, in addition to any other legal or equitable remedies, seek an injunction or other equitable relief against such breach or threatened breach without the necessity of posting any bond or surety.

## **9. Non-solicitation**

During the term of this Agreement, neither party will (on behalf of itself or any other person or entity) solicit any Purchaser or Merchant of the other party to restrict, limit, or terminate such Purchaser's or Merchant's participation in the other party's products and services.

## **10. Miscellaneous**

10.1 **Choice of Law.** This contract shall be governed by and construed in accordance with the laws of the State of California, without regard to the provisions of the conflict of laws thereof. The parties will resolve any disputes in the state or federal courts located in San Bernardino County, California, to whose exclusive jurisdiction and venue they irrevocably submit. Notwithstanding anything to the contrary, either party may pursue injunctive or other equitable relief in any court of competent jurisdiction.

10.2 **Notices.** Any notice or other communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given on the day of service if served personally or by facsimile transmission with confirmation, or three (3) days after mailing if mailed by First Class mail, registered or certified, postage prepaid, and addressed to the respective parties at the addresses set forth above, or at such other addresses as may be specified by either party pursuant to the terms and provisions of this section.

10.3 **Assignment.** Customer may not assign or otherwise transfer, without the prior written consent of Yiftee, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part. Yiftee may freely assign or otherwise transfer this Agreement in connection with the sale of all or substantially all of its business or assets. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

10.4 **Severability.** Any provision of this Agreement that is determined to be unenforceable or unlawful shall not affect the remainder of the Agreement and shall be severable therefrom, and the unenforceable or unlawful provision shall be limited or eliminated to the minimum extent necessary to that this Agreement shall otherwise remain in full force and effect and enforceable.

10.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements between them, whether written or oral, with respect to the subject matter hereof, and may not be amended, modified or provision hereof waived, except in a writing signed by the parties hereto. No waiver by either party, whether express or implied, of any provision of this Agreement, or of any breach thereof, shall constitute a continuing waiver of such provision or a breach or waiver of any other provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Customer (Print):

YIFTEE, INC.

By:



By:

Name, Title: Michael Blay, Upland City Manager

Name, Title: Donna Novitsky, Yiftee CEO

10.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements between them, whether written or oral, with respect to the subject matter hereof, and may not be amended, modified or provision hereof waived, except in a writing signed by the parties hereto. No waiver by either party, whether express or implied, of any provision of this Agreement, or of any breach thereof, shall constitute a continuing waiver of such provision or a breach or waiver of any other provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Customer (Print):

YIFTEE, INC.

By:

By:

A handwritten signature in black ink, appearing to read "Donna Novitsky", written over a faint circular stamp.

Name, Title: Michael Blay, Upland City Manager

Name, Title: Donna Novitsky, Yiftee CEO

## Community Card Customer Agreement

### APPENDIX A

#### Pricing

Customer and Participants are not required to pay Yiftee a subscription fee or a revenue share. Yiftee does not take a percentage of the cards that are redeemed in the Participants' stores.

#### Charges:

Purchasers pay the face value of the card plus a \$1+5% of the eGift Card value eDelivery fee at the time of purchase. Bulk purchases of one thousand dollars (\$1000) or more, and enterprise accounts may qualify for a reduced eDelivery fee by depositing funds into their Yiftee eGifting accounts by check or ACH and disabling credit cards.

Participants pay Mastercard processing fees for a card-not-present (CNP) transaction upon redemption. Yiftee does not control these fees, they are set by the Merchant Acquirer who is their credit card processor.

Subject to applicable laws, Yiftee will implement a monthly maintenance fee on eGift Cards that have been inactive (i.e. no spending on the Card) for periods of greater than 12 months. This will be made clear to cardholders on the face of the eGift Card when implemented, as is required by law.

Yiftee eGift Cards do not generally expire. Subject to applicable laws, in some cases eGift Cards given by corporations or merchants as promotions, rewards and awards may have expiration dates. In the case of eGift Cards expiring, Yiftee retains 10% of the original eGift Card value not to exceed the remaining unspent funds and refunds the balance to the purchaser's Yiftee eGift Card account. eDelivery fees are not refunded.

Participants may choose, at their discretion, to post Offers to encourage Purchasers to use their Community Cards in their stores.

Participants may choose, at their discretion, to offer rebates as fund raisers to local groups such as schools, churches and other non-profits. Such programs are an incentive for the local groups to sell Community Cards to their members, and for the Purchasers to use them in specific stores who are offering rebates. Yiftee will work with the Participants and Purchasers to execute such programs.

No tipping is allowed on Yiftee eGift Cards.

## Community Card Customer Agreement

### APPENDIX B

#### ARPA REQUIREMENTS

During the performance of this Agreement, Consultant shall comply with all applicable federal laws and regulations including, but not limited to, the federal contract provisions in this Appendix B.

#### **1. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.327)**

(a) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. The Contract Documents include remedies for breach and termination for cause and convenience.

(b) Appendix II to Part 200 (C) – Equal Employment Opportunity: If this Agreement meets the definition of a “federal assisted construction contract” in 41 CFR § 60-1.3, Consultant agrees as follows during the performance of this Agreement:

(i) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.

(iv) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Consultant will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the City so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The City agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of the Consultant and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part the grant (contract, loan, insurance, guarantee) for this project; refrain from extending any further assistance to the applicant under the program with

respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Appendix II to Part 200 (D) – Davis-Bacon Act: Not applicable to this Agreement since it is funded by CSLFRF.

(d) Appendix II to Part 200 (D) – Copeland “Antti-Kickback” Act: Not applicable to this Agreement since it is funded by CSLFRF.

(e) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

(i) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (ii) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.

(iii) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the Consultant, such sums as may be determined to be necessary to satisfy any liabilities of Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.

(iv) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.

(f) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Consultant must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency..

(g) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act:

(i) Pursuant to the Clean Air Act, (1) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.

(ii) Pursuant to the Federal Water Pollution Control Act, (1) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.

(h) Appendix II to Part 200 (H) – Debarment and Suspension:

(i) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Consultant is required to verify that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(ii) Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(iii) This certification is a material representation of fact relied upon by City. If it is later determined that Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(iv) Consultant warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Consultant also agrees to verify that all subcontractors performing work under this Agreement are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Consultant further agrees to notify the City in writing immediately if Consultant or its subcontractors are not in compliance during the term of this Agreement.

(i) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

(j) Appendix II to Part 200 (J) – §200.323 Procurement of Recovered Materials:

(i) Consultant shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.

(ii) In the performance of this Agreement, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.

(iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iv) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

(k) Appendix II to Part 200 (K) – §200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:

(i) Consultant shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Agreement. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(2) Telecommunications or video surveillance services provided by such entities or using such equipment.

(3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(ii) See Public Law 115-232, section 889 for additional information.

(l) Appendix II to Part 200 (L) – §200.322 Domestic Preferences for Procurement:

(i) Consultant shall, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts.

(ii) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **2. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS (2 C.F.R. § 200.321)**

(a) Consultant shall be subject to 2 C.F.R. § 200.321 and will take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award.

(b) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

(v) Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

(c) Consultant shall submit evidence of compliance with the foregoing affirmative steps when requested by the City.

## **3. COMPLIANCE WITH U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS**

(a) Maintenance of and Access to Records. Consultant shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. Consultant agrees to provide the City, Treasury Office of Inspector General and the Government Accountability Office, or any of their authorized representatives access to any books, documents, papers, and records (electronic or otherwise) of the Consultant which are directly pertinent to this Agreement for the purposes of conducting audits or other investigations. Records shall be maintained by Consultant for a period of five (5) years after completion of the Project.

(b) Compliance with Federal Regulations. Consultant agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Consultant also agrees to

comply with all other applicable federal statutes, regulations, and executive orders, including, without limitation, the following:

(i) Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

(ii) Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

(iii) OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

(iv) Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

(v) Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

(vi) New Restrictions on Lobbying, 31 C.F.R. Part 21.

(vii) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

(c) Compliance with Federal Statutes and Regulations Prohibiting Discrimination. Consultant agrees to comply with statutes and regulations prohibiting discrimination applicable to the CSLFRF program including, without limitation, the following:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

(ii) The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

(iv) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.

(v) Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

(d) False Statements. Consultant understands that making false statements or claims in connection with the CSLFRF program is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

(e) Protections for Whistleblowers.

(i) In accordance with 41 U.S.C. § 4712, Consultant may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

(ii) The list of persons and entities referenced in the paragraph above includes the following:

(1) A member of Congress or a representative of a committee of Congress;

(2) An Inspector General;

(3) The Government Accountability Office;

(4) A Treasury employee responsible for contract or grant oversight or management;

(5) An authorized official of the Department of Justice or other law enforcement agency;

(6) A court or grand jury; or

(7) A management official or other employee of Consultant, or a subcontractor who has the responsibility to investigate, discover, or address misconduct.

(f) Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Consultant is encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles, and encourage its subcontractors to do the same

(g) Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Consultant should encourage its employees and subcontractors to adopt and enforce policies that ban text messaging while driving, and Consultant should establish workplace safety policies to decrease accidents caused by distracted drivers.

(h) Assurances of Compliance with Civil Rights Requirements. The Civil Rights Restoration Act of 1987 provides that the provisions of this assurance apply to the Project, including, but not limited to, the following:

(i) Consultant ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. §

2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166; directives; circulars; policies; memoranda and/or guidance documents.

(ii) Consultant acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP)," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, are limited in their English proficiency. Consultant understands that the denial of access to persons to its programs, services and activities because of their limited proficiency in English is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964. Accordingly, Consultant shall initiate reasonable steps, or comply with Treasury's directives, to ensure meaningful access to its programs, services and activities to LEP persons. Consultant understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary to ensure effective communication in the Project.

(iii) Consultant agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on LEP, please visit <http://www.lep.gov>.

(iv) Consultant acknowledges and agrees that compliance with this assurance constitutes a condition of continued receipt of federal financial assistance and is binding upon Consultant and Consultant's successors, transferees and assignees for the period in which such assistance is provided.

(v) Consultant agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Consultant and the Consultant's subcontractors, successors, transferees and assignees:

*The subcontractor, successor, transferee and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by Department of the Treasury Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also extends protection to persons with "Limited English proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by Department of the Treasury Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement).*

(vi) Consultant understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Consultant, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Consultant for the period during which it retains ownership or possession of the property.

(vii) Consultant shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. Consultant shall comply with information requests, on-site compliance reviews, and reporting requirements.

(viii) Consultant shall maintain a complaint log and inform the Department of the Treasury of any accusations of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Consultant must also inform the Department of the Treasury if Consultant has received no complaints under Title VI.

(ix) Consultant must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Consultant and the administrative agency that made the finding. If the Consultant settles a case or matter alleging such discrimination, Consultant must provide documentation of the settlement. If Consultant has not been the subject of any court or administrative agency finding of discrimination, please so state.

(x) If Consultant makes sub-awards to other agencies or other entities, Consultant is responsible for assuring that sub-recipients also comply with Title VI and all of the applicable authorities covered in this assurance.