

**CARES Act
Outdoor Heater Agreement**

This CARES ACT OUTDOOR HEATER AGREEMENT, effective **December 9, 2020**, is between the CITY OF SACRAMENTO, a California municipal corporation (the “City”), and the City of Sacramento-based business identified as the “Recipient” on the signature page of this Agreement.

Background

On March 27, 2020, the United States enacted the Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”). Section 5001 of the CARES Act established the Coronavirus Relief Fund (the “**CRF**”) and appropriated \$150 billion to the CFR by adding section 601 to the Social Security Act. The Catalog of Federal Domestic Assistance (CFDA) number assigned to the CRF is 21.019. The federal government awarded the City \$89,623,427.20 from the CRF. The CARES Act provides that payments from the CFR may only be used to cover costs that: (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

The City is using funds from the CRF to provide the Recipient, as a direct beneficiary, with the following supplies: outdoor heaters (the “**COVID-19 Supplies**”). The City is purchasing outdoor heaters as a component of its Small Business Recovery Grant Program. Due to the most recent County health restrictions, indoor operations are limited and it is anticipated that indoor operations will be prohibited entirely again prior to December 30, 2020. Therefore, the City has determined that utilizing CRF funds to purchase outdoor heaters for Sacramento businesses is a necessary expenditure as it will mitigate the health and financial effects of the COVID-19 public health emergency by enabling businesses to operate facilities outdoors to limit the spread of COVID-19.

With these background facts in mind, the City and the Recipient agree as follows:

1. Term. This agreement takes effect on the date first referenced above. The Recipient must use the COVID-19 Supplies for Authorized Activities before December 30, 2020.

2. Disbursement of COVID-19 Supplies. The City shall provide the COVID-19 Supplies to the Recipient within 10 days after the effective date of this agreement.

(a) The Recipient shall use the COVID-19 Supplies solely to carry out the following activities (“**Authorized Activities**”):

To heat outdoor commercial spaces, in compliance with the County’s public health orders.

Recipient agrees not to sell or otherwise dispose of the COVID-19 Supplies. In the event Recipient no longer has a need to heat outdoor commercial spaces to comply with the County’s public health orders, it shall notify the City within 10 business days so that the City may retrieve the COVID-19 Supplies and redistribute them to other Sacramento businesses or take any other action with them.

(b) The Recipient’s use of the COVID-19 Supplies is subject to the restrictions set forth in the CARES Act and the United States Department of Treasury’s Coronavirus Relief Fund

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Guidance for State, Territorial, Local, and Tribal Governments, dated June 30, 2020, (the “Guidance”) and Frequently Asked Questions as they may be amended from time to time, and found at <https://home.treasury.gov/policy-issues/cares/state-and-local-governments>.

3. **Books and Records.** During the term of this agreement and for five years after the City provides the COVID-19 Supplies to the Recipient, the Recipient shall keep appropriate records in connection with the COVID-19 Supplies provided under this agreement available to the City, any independent auditor, and the United States Department of the Treasury Office of Inspector General (“OIG”) at all reasonable times to determine compliance with this agreement.
4. **Termination.** The City may terminate this agreement and demand the return of COVID-19 Supplies if the City Manager determines that the Recipient has failed to perform, or has performed unsatisfactorily, any term of this agreement, including failing to use the COVID-19 Supplies for Authorized Activities in accordance with the CARES Act and the Guidance.
5. **Reporting.** The Recipient acknowledges that it shall, no later than June 30, 2021, provide the City with a report certifying that it used the COVID-19 Supplies solely for Authorized Activities in accordance with the CARES Act and the Guidance.
6. **Indemnity.** The Recipient shall defend, hold harmless and indemnify the City, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, and demands of every type and description, including, but not limited to, any fees and/or costs reasonably incurred in enforcing this provision (collectively, “Liabilities”), arising out of or in any way related to this agreement, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment, except that the foregoing indemnity does not apply to liability to any Liabilities arising from the sole negligence or willful misconduct of the City. The Recipient’s liability to the City is not in any way limited to or affected by the amount of insurance coverage required or carried by the Recipient in connection with this agreement.
7. **Exclusion of Warranties.** **THE CITY CONVEYS, AND THE RECIPIENT ACCEPTS, THE COVID-19 SUPPLIES “AS-IS.” THE CITY MAKES NO GUARANTEE, WARRANTY, OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE CONDITION, QUANTITY, KIND, CHARACTER, QUALITY, WEIGHT, SIZE, DESCRIPTION, MERCHANTABILITY, FITNESS FOR ANY USE OR PURPOSE, OR OTHER CHARACTERISTIC OF THE COVID-19 SUPPLIES.** The Recipient agrees that it was given full opportunity to inspect and examine the COVID-19 Supplies. The Recipient’s failure to inspect will not constitute grounds for any claim against the City.
8. **Miscellaneous.**
 - (a) *Assignment.* The Recipient may not assign or otherwise transfer this agreement or any interest in it without the City’s written consent, which the City may grant or deny in its sole discretion. Any assignment or other transfer made contrary to this section 8(a) is void.
 - (b) *Interpretation.* This agreement is to be interpreted and applied in accordance with California law. If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

- (c) *Waiver of Breach.* A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon the other party's breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this agreement is not a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- (d) *Counterparts.* The parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.
- (e) *Compliance with all Laws, Requirements, and Orders.* The Recipient shall comply with all applicable laws, regulations, orders of public officials, and requirements in performance of this agreement, including all non-discrimination and equal opportunity laws.
- (f) *Authority to Sign.* The person signing this agreement on Recipient's behalf represents that he or she is authorized to do so and that no further action beyond his or her signature is required to bind Recipient to this agreement. City shall have no obligations whatsoever under this agreement, unless and until this agreement is executed by the City Manager or the City Manager's authorized designee.
- (g) *Tax Implications and Consequences.* Recipient shall consult with its own tax advisors or tax attorneys regarding this transaction and acknowledges having had an opportunity to do so prior to signing this agreement. Recipient acknowledges the City has made no representation as to the tax consequences and cannot provide advice regarding the tax consequences or implications of the CRF funds disbursed to Recipient under the terms of this agreement.

[Signatures on the Following Page]

CITY OF SACRAMENTO,
a California municipal corporation

RECIPIENT, a City of Sacramento-based
Business

By: _____
Assistant City Manager

By: _____
Authorized Signatory

ATTEST:
Sacramento City Clerk

Print Name, Title of Signatory

By: _____
Deputy City Clerk

Business Name ("Recipient")

APPROVED AS TO FORM:
Sacramento City Attorney

Recipient Email Address

By: 

Deputy City Attorney

Recipient Phone Number

Recipient BOTC number

Operations moved outdoors due to COVID-19:

