



AMERICAN RESCUE PLAN ACT OF 2021 ("ARPA") CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUND ("SLFRF") AGREEMENT FOR RECIPIENT SERVICES

THIS AGREEMENT is entered into by and between the **CITY OF KINGSTON**, a municipal corporation and a City of the State of New York with principal offices at City Hall, 420 Broadway, Kingston, New York 12401 (the "**City**"), and 350 China Cat LLC, an LLC with principal offices at 350 Broadway Kingston, New York (the "**Recipient**"), (each, a "**Party**;" together, the "**Parties**").

RECITALS

WHEREAS, on March 11, 2021, the U.S. Senate-amended H.R. 1319 (P.L. 117-2), known as the American Rescue Plan Act ("ARPA") was signed into law; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued an interim final rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (the "CFR"); and

WHEREAS, Section 9901 of ARPA amended Title VI of the Social Security Act to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the "SLFRF"), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of COVID-19 in their communities; and

WHEREAS, the City, as a SLFRF recipient, desires to utilize a portion of the SLFRF funds to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) and/or its negative economic impacts, including housing insecurity; and

WHEREAS, the City, by and through its Department of Housing Initiatives, desires to enter into an agreement for the creation of affordable housing units; and

WHEREAS, the Recipient was chosen by an evaluation committee reviewing applications for the City's ARPA Affordable Housing Fund; and

WHEREAS, the City has agreed to engage the Recipient, and the Recipient has agreed to contract with the City, to create affordable housing units pursuant to the Recipient's Response to the ARPA Affordable Housing Fund Program and in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties hereby agree as follows:

ARTICLE 1 – SCOPE OF SERVICES

The Recipient agrees to perform the services identified in Schedule A, the Scope of Services (the "Services"), which is attached to and made a part of this Agreement. The Recipient agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Recipient that the City will not compensate the Recipient for any services not included in Schedule A without prior authorization, evidenced only by a written Change Order, Amendment, or Addendum to this Agreement, which is executed by the Mayor of the City of Kingston (the

“Mayor”) after consultation with the head of the City Department responsible for the oversight of this Agreement (the “Department Head”), and upon review by the City’s Corporation Counsel.

ARTICLE 2 – TERM OF AGREEMENT

The Recipient agrees to perform the Services beginning November 15, 2023 and ending March 31, 2025.

ARTICLE 3 – COMPENSATION

A **not-to-exceed** amount of **TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS AND 00/100 (\$225,000.00) DOLLARS** has been established for the Services to be rendered by the Recipient. Costs in excess of the above amount may not be incurred without the prior written authorization of the Mayor, after consultation with the Department Head, and evidenced only by a written Change Order, Amendment, or Addendum to this Agreement. It is specifically agreed to by the Recipient that the City will not be responsible for any additional costs, or costs in excess of the above cost, if authorization by the Mayor is not given in writing prior to the performance of any services giving rise to such excess or additional costs. The City shall be invoiced and make payments as described in Schedule B, “Fees, Expenses, and Submissions for Payment.”

In the event that the Recipient receives payments, from any source whatsoever, in consideration for the same Services provided to the City under this Agreement, the monetary obligation of the City under this Agreement will be reduced by an equivalent amount, provided, however, that nothing contained herein will require such reimbursement where additional similar services are provided and no duplicative payments are received.

ARTICLE 4 – EXECUTORY CLAUSE

The City will have no liability under this Agreement to the Recipient or to anyone else beyond funds appropriated and available for this Agreement. The City may terminate this Agreement if funds are not appropriated, available, or are reduced for this Agreement.

The Recipient understands and agrees that the dollar amounts identified in this Agreement are based upon funding allocations from the State of New York and/or the Federal Government, which are the basis for any payments made by the City under this Agreement. In the event that the anticipated amount of funding changes, or is reduced or denied, in part or in full, the City, where appropriate, will not be liable to the Recipient for the difference. If the full state and/or federal funding to the City for any payment to be made or which has been made under this Agreement, by the City to the Recipient, is reduced for any reason whatsoever, then the City may (i) deduct and withhold from any future payment(s) an amount equal to the reduction in funding, or (ii) otherwise recover from the Recipient the amount of the reduction. It is understood that based upon changes in the state and/or federal funding process, the actual amounts in this Agreement may change throughout the Term. The amounts in this Agreement will be amended to reflect the actual amounts to be paid upon notification to the City by the state and/or Federal Government, as necessary.

ARTICLE 5 – PROCUREMENT OF AGREEMENT

The Recipient represents and warrants that no person or selling agent has been employed or retained by the Recipient to solicit or secure this Agreement upon a separate agreement, or upon an understanding for a commission, percentage, brokerage fee, contingent fee, or any other compensation. The Recipient further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the Parties. The Recipient makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the City will have the right to annul this Agreement without liability, entitling the City to recover all monies paid under this Agreement, and the Recipient shall neither make claim for, nor be entitled to recover any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the City for such breach or violation, nor will it constitute a waiver of the City’s right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

ARTICLE 6 – CONFLICT OF INTEREST

The Recipient represents and warrants that neither it, nor any of its directors, officers, members, partners, or employees, have any interest, nor will they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the Services to be provided pursuant to this Agreement. The Recipient further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest will be employed by it, and that no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, by the City, or any corporation, partnership, or association in which such official, officer, or employee is directly or indirectly interested, will have any such interest, direct or indirect, in this Agreement, or in the proceeds thereof, unless such person (i) is required by the Code of the City of Kingston, as amended from time to time, to submit a disclosure form to the City’s Board of Ethics, and amends such disclosure form to include their interest in this Agreement, or (ii) if not required to complete and submit such a disclosure form, either voluntarily completes and submits said disclosure form, disclosing their interest in this Agreement, or seeks a formal opinion from the City’s Board of Ethics, as to whether or not a conflict of interest exists.

For a breach or violation of such representations or warranties, the City will have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder, and the Recipient must not make claim for, nor be entitled to recover any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the City for such breach or violation, nor will it constitute a waiver of the City’s right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

ARTICLE 7 – REPRESENTATIONS BY THE RECIPIENT

The Recipient represents that it is fully licensed (to the extent required by law), experienced, and properly qualified to perform the Services to be provided under this Agreement, and that it is properly permitted, equipped, organized, and financed to perform such Services.

The Recipient understands that it may become necessary for the City to submit to governmental agencies and/or authorities, or to a court of law, part or all of the data, analyses, and/or conclusions developed as a result of its performance of these Services. The Recipient is aware that there are significant penalties for submitting false information to governmental agencies, including the possibility of fines and imprisonment. The Recipient shall be responsible for such penalties resulting from false information submitted to the City by the Recipient.

By signing this Agreement, the Recipient is attesting to that fact that neither it nor any of its employees, agents, representatives, officers, subcontractors, or any other entity or individual providing Services pursuant to this Agreement has been sanctioned, excluded, or in any other manner barred from doing business with any federal, state, or local agency, municipality, or department. If the Recipient or any of its officers, employees, subcontractors, or agents become excluded or barred in any manner from doing business with any federal, state, or local agency, municipality, or department during the Term of this Agreement, the Recipient agrees to provide immediate and detailed notice to the City’s Corporation Counsel regarding such status. Any misrepresentation or false statement related to the Recipient’s status in this regard, or any failure by the Recipient to immediately notify the City’s Corporation Counsel of any change in such status will result in immediate termination of this Agreement, in addition to such other remedies as may be provided by law, in equity, or pursuant to this Agreement.

ARTICLE 8 – CORPORATE COMPLIANCE

The Recipient agrees to comply with all federal, state, and local laws, rules, and regulations governing the provision of Services under this Agreement. In particular, the Recipient agrees to comply with the laws, rules and regulations of the City of Kingston. The City strongly encourages all healthcare providers contracting with the City to implement their own compliance programs that address each of the elements of compliance recommended by the Office of the Inspector General, as well as the elements as recommended and/or mandated by the New York State Office of the Medicaid Inspector General.

The City will conduct appropriate screening of providers, independent contractors, Recipients, and agents to ensure and verify that they have not been sanctioned and/or excluded by any federal or state law enforcement, regulatory, or licensing

authority. The City will also verify that entities and businesses that provide and/or perform the Services have not been the subject of adverse governmental actions and/or excluded from the federal healthcare programs.

ARTICLE 9 – FAIR PRACTICES

The Recipient, and each person signing on behalf of the Recipient, represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

- A. The prices in this Agreement have been arrived at independently by the Recipient without collusion, consultation, communication, or agreement with any other bidder, proposer, or with any competitor, as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition; and
- B. Unless otherwise required by law, the prices that have been quoted in this Agreement and on the proposal or quote submitted by the Recipient have not been knowingly disclosed by the Recipient prior to the communication of such quote to the City, or prior to the proposal opening, directly or indirectly, to any other bidder, proposer, or to any competitor; and
- C. No attempt has been made or will be made by the Recipient to induce any other person, partnership, corporation, or other entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that the Recipient (i) published price lists, rates, or tariffs covering the Services and/or items being procured, (ii) informed prospective customers of proposed or pending publication of new or revised price lists for such Services and/or items, or (iii) provided the same Services and/or items to other customers at the same prices being bid or quoted, does not constitute, without more, a disclosure within the meaning of this Article 9.

ARTICLE 10 – INDEPENDENT CONTRACTOR

In performing the Services and incurring expenses under this Agreement, the Recipient shall operate as and have the status of an independent contractor, and shall not act as agent for or on behalf of the City, nor will the Recipient represent the City, or bind the City in any manner. As an independent contractor, the Recipient shall be solely responsible for determining the means and methods of performing the Services, and shall have complete charge and responsibility for the Recipient's personnel engaged in the performance of the same.

In accordance with such status as independent contractor, the Recipient covenants and agrees that neither it, nor its employees or agents, will proclaim themselves to be officers or employees of the City, or of any department, agency, or unit thereof, by reason hereof, and that the Recipient's employees or agents will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the City including, but not limited to, Workers' Compensation coverage, health insurance coverage, Unemployment Insurance benefits, Social Security benefits, or employee retirement membership or credit.

Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership, or joint venture, or any other fiduciary relationship.

ARTICLE 11 – ASSIGNMENT

The Recipient shall not assign any of its rights, interests, or obligations under this Agreement, or assign any of the Services to be performed by it under this Agreement, without the prior express written consent of the Mayor, upon review by the City's Corporation Counsel. Any such assignment, transfer, conveyance, or other disposition without such prior consent will be void, and any Services provided thereunder will not be compensated. Any assignment properly consented to by the Mayor will be subject to all of the terms and conditions of this Agreement.

Failure of the Recipient to obtain any required consent to any assignment will be grounds for termination for cause at the option of the City, and if this Agreement be so terminated, the City will thereupon be relieved and discharged from any further liability and obligation to the Recipient, its assignees, or transferees; and all monies that may become due under this Agreement shall be forfeited to the City, except so much thereof as may be necessary to pay the Recipient's employees for past Services.

The provisions of this clause shall not hinder, prevent, or affect any assignment by the Recipient for the benefit of its creditors made pursuant to Article 2 of Chapter 12 of the New York Debtor and Creditor Law, except where the Federal Supremacy Clause requires otherwise.

This Agreement may be assigned by the City to any corporation, agency, municipality, or instrumentality having authority to accept such assignment.

ARTICLE 12 – SUBCONTRACTING

The Recipient agrees to include the following provisions in any and all subcontract agreements for Services to be performed pursuant to this Agreement:

- A. That the work performed by the subcontractor must be in accordance with the terms and conditions of this Agreement between the City and the Recipient; and
- B. That nothing contained in the subcontractor agreement will impair the rights of the City; and
- C. That nothing contained in the subcontractor agreement, or under this Agreement between the City and the Recipient, will create any contractual relation in law or equity, between the subcontractor and the City; and
- D. That the subcontractor specifically agrees to be bound by the confidentiality provision as set forth in Article 15 of this Agreement between the City and the Recipient.

Upon the City’s request, the Recipient shall provide copies of any and all subcontract agreements for Services to be performed pursuant to this Agreement.

The Recipient agrees that it is fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them to the same extent as it is for the acts and omissions of persons employed by the Recipient. The Recipient will not in any way be relieved of any responsibility under this Agreement by any subcontract.

ARTICLE 13 – PERFORMANCE

The Recipient shall perform the Services using its own equipment and facilities wherever and whenever possible. In performing the Services, the Recipient shall assign qualified personnel and perform such Services in accordance with the professional standards and with the skill, diligence and quality control/quality assurance measures expected of a reputable company performing Services of a similar nature. The Recipient is hereby given notice that the City will be relying upon the accuracy, competence, and completeness of the Recipient’s performance in using the results achieved by the Recipient’s performance of these Services. The Recipient shall at all times comply with all applicable federal, New York State, and local laws, ordinances, statutes, rules, and regulations.

ARTICLE 14 –INTENTIONALLY LEFT BLANK

ARTICLE 15 – CONFIDENTIALITY

For purposes of this Article:

- A. The term “Confidential Information” as used herein, means all material and information, whether written or oral, received by the Recipient from or through the City or any other person connected with the City, or developed, produced, or obtained by the Recipient in connection with its performance of Services under this Agreement. Confidential Information will include, but not be limited to: samples, substances and other materials, conversations, correspondence, records, notes, reports, plans, drawings, specifications and other documents in draft or final form, including any documentation or data relating to the results of any investigation, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations, and/or comments relating thereto.

- B. The term “Recipient” as used herein includes all officers, directors, employees, agents, subcontractors, assignees, or representatives of the Recipient.

The Recipient shall keep all Confidential Information in a secure location within the Recipient’s offices. The City will have the right, but not the obligation, to enter the Recipient’s offices in order to inspect the arrangements of the Recipient for keeping Confidential Information secure. The City’s inspection, or its failure to inspect, will not relieve the Recipient of its responsibilities pursuant to this Article 15.

The Recipient shall hold Confidential Information in trust and confidence, and must not disclose Confidential Information, or any portion thereof, to anyone other than the City without the prior written consent of the Mayor, and must not use Confidential Information, or any portion thereof, for any purpose whatsoever except in connection with its performance of the Services under this Agreement.

The Recipient shall notify the City immediately upon its receipt of any request by anyone other than the City for, or any inquiry related to, Confidential Information. The Recipient is not prohibited from disclosing portions of Confidential Information if and to the extent that: (i) such portions have become generally available to the public other than by an act or omission of the Recipient, or (ii) disclosure of such portions is required by subpoena, warrant, or court order; provided, however, that in the event anyone other than the City requests all or a portion of Confidential Information, the Recipient shall oppose such request and cooperate with the City in obtaining a protective order or other appropriate remedy, unless and until the Mayor, upon consultation with the City’s Corporation Counsel, in writing, waives compliance with the provisions of this Article 15, or determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the City waives compliance with this Article 15, or determines that such disclosure is legally required, the Recipient shall disclose only such portions of Confidential Information that, in the opinion of the City, the Recipient is legally required to disclose, and the Recipient shall use its best efforts to obtain from the party to whom Confidential Information is disclosed, written assurance that confidential treatment will be given to any such Confidential Information disclosed, to the extent permitted by law.

Prior to the performance of any of the Services in connection with this Agreement, the Recipient shall obtain from each of its subcontractors, a confidentiality agreement running to the benefit of the City that is substantively identical to this Article 15. Further, at any time, if requested by the City, the Recipient shall obtain such an agreement from the officers, directors, agents, representatives, or employees of the Recipient and/or any of its subcontractors.

ARTICLE 16 – OWNERSHIP OF CONFIDENTIAL INFORMATION

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 15, including all copies thereof, is the exclusive property of the City regardless of whether or not it is delivered to the City. The Recipient shall deliver Confidential Information and all copies thereof to the City upon request.
- B. To the extent that copies of Confidential Information are authorized by the City to be retained by the Recipient, such information shall be retained in a secure location in the Recipient’s office for a period of six (6) years after completion of the Services, or termination of this Agreement, whichever occurs later, and thereafter disposed of at the City’s direction.

ARTICLE 17 – INTENTIONALLY LEFT BLANK

ARTICLE 18 – PUBLICITY

The prior written approval of the City is required before the Recipient or any of its employees, representatives, servants, agents, assignees, or subcontractors may, at any time either during or after completion or termination of this Agreement, make any statement to the media or issue any material for publication bearing on the Services performed or data collected in connection with this Agreement.

The City expressly retains the sole right to draft and release written and visual public communication material covering the award of ARPA funds, and to schedule, at its sole discretion, a ribbon-cutting or other completion event for the work completed pursuant to this Agreement. After initial release of the City's content for such event, the Recipient may subsequently upload, share, and otherwise disburse the City's public communication material through the Recipient's social media, newsletter, email, or other communication platforms. When there is a reuse of City content by the Recipient regarding ARPA-related events, the Recipient shall notify the City of such release by email and, where applicable, by social media tag on the released content.

If the Recipient, or any of its employees, representatives, servants, agents, assignees, or subcontractors desires to publish a work dealing with any aspect of this Agreement, or of the results or accomplishments attained by its performance, the Recipient must first obtain the prior written permission of the Mayor, which, unless otherwise agreed to in said written permission, will entitle the City to a royalty fee and a non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, such publication. Such work shall include the following language: "This project is being supported, in whole or in part, by American Rescue Plan Act funding awarded to the City of Kingston by the U.S. Department of the Treasury."

ARTICLE 19 – RETENTION OF RECORDS

The Recipient agrees to maintain separate and accurate books, records, documents, and other evidence, and to employ accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

The Recipient agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever occurs later. The City, any New York State and/or federal auditors, and any other persons duly authorized by the City, will have full access and the right to examine any of said materials during said period.

ARTICLE 20 – AUDITING AND REPORTS

All forms or invoices presented for payment to be made under this Agreement, and the books, records, and accounts upon which said forms or invoices are based, are subject to audit by the City. The Recipient shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the City so that it may evaluate the reasonableness of the charges, and the Recipient shall make its records available to the City upon request. All books, forms, records, reports, cancelled checks, and any and all similar material may be subject to periodic inspection, review, and audit by the City, the State of New York, the Federal Government and/or other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds, whether from the City, the State of New York, the Federal Government, private sources, or otherwise. The Recipient agrees to work collaboratively with the City to ensure the City's compliance with ARPA and any other laws, rules, and regulations which are applicable to ARPA funding. The Recipient will not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 21 – NO DISCRIMINATION

As required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, including the Civil Rights Act, the Recipient must not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition, carrier status, military status, domestic violence victim status, or marital status.

If this Agreement provides for a total expenditure in excess of \$25,000.00, the Recipient shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on City contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action will mean recruitment, employment, job assignment, promotion, upgrade, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation.

Furthermore, in accordance with New York State Labor Law Section 220-e, if this is an Agreement for the construction or alteration of any public building or public work, or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement will be performed within the State of New York, the Recipient agrees that neither it, nor its subcontractors, will, by reason of race, creed, color, disability, sex, or national origin: (i) discriminate in hiring against any New York State citizen who is qualified and available to perform the Services, or (ii) discriminate against or intimidate any employee hired for the performance of Services under this Agreement. If this is a building service agreement as defined in the New York State Labor Law Section 230, then in accordance with New York State Labor Law Section 239, the Recipient agrees that neither it, nor its subcontractors, will by reason of race, creed, color, national origin, age, sex or disability: (i) discriminate in hiring against any New York State citizen who is qualified and available to perform the Services, or (ii) discriminate against or intimidate any employee hired for the performance of Services under this Agreement. The Recipient is subject to (i) a fine of Fifty and 00/100 (\$50.00) Dollars per person, per day, for any violation of the New York State Labor Law Sections 220-e or 239, and/or (ii) possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

The Recipient understands that the City has established a Policy Regarding Discrimination and Harassment, and represents that it has read and agrees to comply with the requirements therein.

ARTICLE 22 – PREVAILING WAGE

In accordance with New York State Labor Law Section 220-d, if this is an Agreement for the construction, reconstruction, maintenance and/or repair of any public work, the Recipient agrees that all laborers, workers, or mechanics employed by the Recipient and/or its subcontractors in contemplation of the performance of this Agreement shall be paid not less than such hourly minimum rate of wage and shall be provided supplements not less than the prevailing supplements as designated by the New York State Commissioner of Labor.

ARTICLE 23 – INSURANCE

For provision of the Services set forth herein and as may be hereinafter amended, the Recipient shall maintain or cause to be maintained in full force and effect during the term of this Agreement, at its expense, insurance with stated minimum coverage as set forth in Schedule C, which is attached hereto and is hereby made a part of this Agreement. Such policies are to be in the broadest form available on usual commercial terms and must be written by insurers who have been fully informed as to the nature of Services to be performed by the Recipient pursuant to this Agreement. Such insurers shall be of recognized financial standing, satisfactory to the City. The City shall be named as an additional insured on all commercial general liability policies with the understanding that any obligations imposed upon the insured (including, without limitation, the obligation to pay premiums) will be the sole obligation of the Recipient and not those of the City. Notwithstanding anything to the contrary in this Agreement, the Recipient irrevocably waives all claims against the City for all losses, damages, claims, or expenses resulting from risks commercially insurable under the insurance described in Schedule C and this Article 23. The provision of insurance by the Recipient will not in any way limit the Recipient's liability under this Agreement.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary, without right of contribution of any other insurance carried by or on behalf of the City, with respect to its interests, (ii) it shall not be cancelled or materially amended without thirty (30) days prior written notice to the City, except in the case of cancellation for non-payment of premium which requires ten (10) days prior written notice, directed to the Mayor and the Department Head, and (iii) the City will have the option to pay any necessary premiums to keep such insurance in effect, and charge the cost back to the Recipient.

To the extent it is commercially available, each policy of insurance must be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis it must be provided on a "claims made" basis, and all such "claims made" policies must provide that:

- A. Policy retroactive dates coincide with or precede the Recipient's start of the performance of Services (including subsequent policies purchased as renewals or replacements); and
- B. If the insurance is terminated for any reason, the Recipient agrees to purchase for the City an unlimited, extended reporting provision to report claims arising from the Services performed under this Agreement; and

- C. The Recipient must give immediate notice to the Mayor and the City's Corporation Counsel of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

ARTICLE 24 – INDEMNIFICATION

The Recipient agrees to defend, indemnify, and hold harmless the City, including its officials, employees, and agents, against all claims, losses, damages, liabilities, costs, or expenses (including without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the Services performed by the Recipient, its employees, representatives, subcontractors, assignees, or agents pursuant to this Agreement, which the City, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Recipient, its employees, representatives, subcontractors, assignees, or agents. The Recipient agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demands, or suits at its sole expense, and agrees to bear all other costs and expenses related thereto, even if such claims, demands, or suits are groundless, false, or fraudulent.

In the event that any claim is made or any action is brought against the City arising out of the negligence, fault, act, or omission of the Recipient or an employee, representative, subcontractor, assignee, or agent of the Recipient, either within or without the scope of the respective employment, representation, subcontract, assignment, or agency, or arising out of the Recipient's negligence, fault, act, or omission, then the City will have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover said claim or action. The rights and remedies of the City provided for in this clause will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

ARTICLE 25 – RESPONSIBILITY TO CORRECT DEFICIENCIES

The Recipient shall be responsible to correct, in a timely fashion and at the Recipient's sole expense, any deficiencies in its Services resulting from the Recipient's failure to act in accordance with the standards set forth in Article 13 (Performance) and Schedule A, provided such deficiencies are reported to the Recipient within one hundred-twenty (120) days after completion and final acceptance of the Services. If the Recipient fails to correct such deficiencies in a timely and proper manner, the City may elect to have others perform such corrections, and the City may charge any related cost of such corrections to the Recipient and/or set-off such amount against any sums otherwise due to the Recipient. These remedies, if effected, will not constitute the sole or exclusive remedies afforded to the City for such deficiencies, nor will they constitute a waiver of the City's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

ARTICLE 26 – CURRENT OR FORMER CITY EMPLOYEES

The Recipient represents and warrants that during the Term of this Agreement and for a period of one (1) year after its expiration or termination, it shall not retain the services of any City employee or former City employee in connection with this Agreement, or any other agreement that said Recipient has or may have with the City, without the express written permission of the Mayor.

For a breach or violation of such representations or warranties, the City will have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder, and the Recipient must neither make claim for, nor be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the City for such breach or violation, nor will it constitute a waiver of the City's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity or pursuant to this Agreement.

ARTICLE 27 – PROTECTION OF CITY PROPERTY

The Recipient assumes the risk of and shall be responsible for any loss or damage to the City's property and equipment, whether owned, leased, or otherwise possessed by the City, used in the performance of this Agreement. Any such loss or damage caused, either directly or indirectly, by the acts, conduct, omissions, or lack of good faith of the Recipient, its officers, directors, members, partners, employees, representatives, or assignees, or any person, firm, company, agent, or

others engaged by the Recipient as an expert, consultant, specialist, or subcontractor hereunder, will be the responsibility of the Recipient.

In the event that any such City property is lost or damaged, except for normal wear and tear, then the City will have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

The Recipient agrees to defend, indemnify, and hold the City harmless from any and all liability or claim for loss, cost, damage, or expense (including without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such City property described in this Article 27.

The rights and remedies of the City provided herein will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

ARTICLE 28 – EXTENSIONS AND DELAYS

If, owing to the actions or neglect of the City, the Recipient is prevented from completing the Services within the Term of this Agreement, then the Recipient's sole and exclusive remedy will be to request that a Change Order, Amendment, or an Addendum to this Agreement be issued by the Mayor, permitting an extension of time to perform the Services, equal to the time lost due to such delay. Such request shall be based upon written notice only, delivered to the Mayor and the Department Head promptly, but not later than thirty (30) days after the initial occurrence of the event giving rise to such claim, and stating the specific nature of the claim. An extension of time to perform the Services may only be granted by a written Change Order, Amendment, or Addendum to this Agreement, signed by the Mayor. In no event will the City be liable to the Recipient, its subcontractors, agents, assignees, or any other person or entity, for damages arising out of or resulting from any such delays.

ARTICLE 29 – TERMINATION

The City may, by written notice to the Recipient, effective upon mailing, terminate this Agreement in whole or in part at any time (i) for the City's convenience, (ii) upon the failure of the Recipient to comply with any of the terms or conditions of this Agreement, or (iii) upon the Recipient becoming insolvent or bankrupt.

In the event that this Agreement is terminated for the convenience of the City, the Recipient will be paid for all Services rendered through the date of termination in accordance with Schedule B.

Upon termination of this Agreement, the Recipient shall comply with any and all City closeout procedures, including but not limited to:

- A. Accounting for and refunding to the City within ten (10) days, any unearned and/or unexpended funds that have been paid to the Recipient pursuant to this Agreement; and
- B. Furnishing to the City within ten (10) days, an inventory of all equipment, appurtenances, and property purchased by the Recipient through, or provided under this Agreement, and carrying out any City directive concerning the disposition thereof.

In the event the City terminates this Agreement, in whole or in part, as provided in this Article 29, the City may procure upon such terms and in such manner as deemed appropriate, Services similar to those so terminated, and the Recipient shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for reasons other than the convenience of the City, the cost and expense of any Services procured by the City to complete the Services herein will be charged to the Recipient and/or set off against any sums due to the Recipient.

Notwithstanding any other provisions of this Agreement, the Recipient will not be relieved of liability to the City for damages sustained by the City by virtue of the Recipient's breach of this Agreement, or failure to perform in accordance with applicable standards. The City may withhold payments due to the Recipient for the purposes of set-off until such time as the exact amount of damages due to the City from the Recipient is determined.

The rights and remedies of the City provided herein will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

ARTICLE 30 – SET-OFF RIGHTS

The City will have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but are not limited to, the City's right to withhold for the purposes of set-off any monies otherwise due to the Recipient (i) under this Agreement, (ii) under any other agreement or contract with the City, including any agreement or contract for a term commencing prior to or after the Term of this Agreement, or (iii) from the City by operation of law. The City will also have the right to withhold any monies otherwise due under this Agreement for the purposes of set-off against any amounts due and owing to the City for any reason whatsoever, including without limitation, tax delinquencies, fee delinquencies and/or monetary penalties or interest relative thereto.

ARTICLE 31 – DISPUTE RESOLUTION

Should any controversy or claim arise out of this Agreement, the Parties shall first attempt to settle their dispute by mediation, facilitated by the American Arbitration Association. If a Party fails to respond to a written request for mediation within 30 days after service, or fails to participate in any scheduled mediation conference, that Party shall be deemed to have waived its right to mediate the issues in dispute.

If the above-referenced mediation does not result in settlement of the entire controversy or dispute within 30 days after the initial mediation conference or if a Party has waived its right to mediate any issues in dispute, any unresolved controversy or claim arising out of or relating to this Agreement will be settled by arbitration administered by the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Notwithstanding the foregoing, the Parties may mutually agree, in writing, to litigate disputes, unresolved controversies or claims not resolved through the above-referenced mediation process if, due to other pending litigation or similar circumstances, litigation would more expeditiously resolve the issues. The Parties agree that any claims related to or arising out of this Contract shall be resolved in Supreme Court of the State of New York, Ulster County.

The Parties further agree that that this entire Agreement is governed by and should be construed in accordance with New York Law, including New York's choice of law rules and New York's arbitration law, Article 75 of New York's Civil Practice Law and Rules.

In the event of a dispute arising from this Agreement, the Recipient shall be liable to the City for reasonable attorney's fees, costs, expenses and disbursements incurred by the City in enforcing its legal and/or equitable rights pursuant to this Agreement by reason of the failure of the Recipient to comply with any of the terms, conditions or warranties of this Agreement, express or implied, and/or the exercise of City's remedies with respect thereto, and/or any error, omission and/or professional negligence of the Recipient or its subcontractors, including but not limited to all attorney's fees, costs, expenses and disbursements incurred by the City in prosecuting a lawsuit against the Recipient, seeking Indemnification pursuant to Article 24, obtaining Correction of Deficiencies pursuant to Article 25, Termination pursuant to Article 29, and/or Set-Off Rights pursuant to Article 30. The Recipient shall further be liable to the City for all prejudgment interest on any award of attorney's fees, costs, expenses and disbursements so awarded. This provision shall survive completion of the Services and/or the expiration or termination of this Agreement.

ARTICLE 32 – GOVERNING LAW

This Agreement is governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

ARTICLE 33 – WAIVER AND SEVERABILITY

The failure of either Party to enforce at any time, any provision of this Agreement, does not constitute a waiver of such provision in any way or waive the right of either Party at any time to avail itself of such remedies as it may have for any breach or breaches of such provision. None of the conditions of this Agreement will be considered waived by the City

unless such waiver is explicitly given in writing by the Mayor. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the terms or conditions of this Agreement, unless expressly stipulated in such waiver as executed by the Mayor.

The invalidity or invalid application of any provision of this Agreement will not affect the validity of any other provision, or the application of any other provision of this Agreement.

ARTICLE 34 – GENERAL RELEASE

Acceptance by the Recipient or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction, administrative, or other means, will constitute and operate as a general release to the City from any and all claims of the Recipient arising out of the performance of this Agreement.

ARTICLE 35 – NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Recipient against any officer, agent, or employee of the City, for or on account of any act or omission in connection with this Agreement.

ARTICLE 36 – ENTIRE AGREEMENT

The rights and obligations of the Parties and their respective agents, successors and assignees will be subject to and governed by this Agreement, including Schedules A, B, C, D, E, and F, which supersedes any other understandings or writings between or among the Parties to this Agreement.

ARTICLE 37 – SURVIVING OBLIGATIONS

The Recipient’s obligations and those of the Recipient’s employees, representatives, agents, subcontractors, successors, and assignees, assumed pursuant to Article 7 (Representations by the Recipient), Article 8 (Corporate Compliance), Article 13 (Performance), Article 15 (Confidentiality), Article 16 (Ownership of Confidential Information), Article 18 (Publicity), Article 19 (Retention of Records), Article 24 (Indemnification), Article 25 (Responsibility to Correct Deficiencies), Article 27 (Protection of City Property), and Article 30 (Set-Off Rights) will survive completion of the Services and/or the expiration or termination of this Agreement.

ARTICLE 38 – NOTICES

Except as expressly provided otherwise in this Agreement, all notices given to any of the Parties pursuant to or in connection with this Agreement will be in writing, will be delivered by hand, by certified or registered mail, return receipt requested, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Except where otherwise specifically defined within this Agreement, notices will be effective when received. Notice addresses are as follows:

Recipient:
350 China Cat LLC
Attention: Charles Brill
350 Broadway
Kingston, New York 12401

City:
City of Kingston Department of Housing Initiatives
Attention: Bartek Starodaj
Office of Housing Initiatives
Kingston, New York 12401

Any communication or notice regarding indemnification, termination, litigation, or proposed changes to the terms and conditions of this Agreement will be deemed to have been duly made upon receipt by both the Kingston City Clerk and the City’s Corporation Counsel at the addresses set forth herein, or such other addresses as may have been specified in writing by the City:

Mailing Address:
City of Kingston
Attention: City Clerk/Corporation Counsel
420 Broadway

Physical Address:
City of Kingston
Attention: City Clerk/Corporation Counsel
420 Broadway

Either Party may, by written notice to the other Party given in accordance with the foregoing, change its address for notices.

ARTICLE 39 – MODIFICATION

No changes, amendments, or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement, and no payment will be due in connection therewith, unless prior to the performance of any such Work, the Mayor, after consultation with the Department Head, executes an Addendum, Amendment, or Change Order to this Agreement. The aforesaid Addendum, Amendment, or Change Order must specifically set forth the scope of such extra or additional services, the amount of compensation, and the extension of time for performance, if any, for any such extra or additional services. Unless otherwise specifically provided for therein, the provisions of this Agreement will apply with full force and effect to the terms and conditions contained in such Addendum, Amendment, or Change Order.

ARTICLE 40 – FORCE MAJEURE

Neither Party to this Agreement will be considered in default in the performance of its obligations under this Agreement, to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, beyond the control of such Party, and which by that Party's exercise of due diligence and foresight could not reasonably have been avoided ("Impacted Party") including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics or pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not); (d) national or regional emergencies; and (e) other similar events beyond the reasonable control of the Impacted Party.

The Impacted Party shall give written notice within thirty (30) days of the Force Majeure Event to the other Party and the Impacted Party shall use diligent efforts to end the failure or delay and to minimize the effects of such Force Majeure Event.

Upon removal of such cause, the Impacted Party affected shall resume its performance as soon as reasonably possible. The Recipient's financial inability to perform will not be deemed to be a Force Majeure Event regardless of the source causing such financial inability. If the Recipient is so delayed in the timely performance of the Work, the Recipient's sole and exclusive remedy is to request that a Change Order, Amendment, or Addendum to this Agreement be issued by the City and signed by the Mayor permitting an extension of time to perform the Work in an amount equal to the time lost due to such delay. Such request shall be based upon written notice only, stating the specific nature of the claim, delivered to the Department Head and the Kingston City Clerk promptly, but not later than thirty (30) days after the initial occurrence of the event giving rise to such claim. An extension of time to perform the Work may only be granted by a written Change Order, Amendment, or Addendum to this Agreement, signed by the Mayor. In no event will the City be liable to the Recipient or to its subcontractors, agents, assignees, or any other person or entity for damages arising out of, or resulting from, any such delays.

ARTICLE 41 – HEADINGS AND DEFINED TERMS

The Article headings used in this Agreement are for reference and convenience only and will not in any way limit or amplify the terms, conditions, and/or provisions hereof. All capitalized terms, acronyms, and/or abbreviations will have the meanings ascribed to them by this Agreement.

ARTICLE 42 – COUNTERPARTS

The Parties may execute this Agreement in counterparts, each of which shall be deemed an original, and all of which taken together constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to enter into this Agreement as of the dates set forth below, effective as of the beginning date set forth in Article 2 above.

Office of Housing Initiatives

(Approved as to content)

By: _____

NAME: Bartek Starodaj

TITLE: Director, Housing Initiatives

DATE: _____

CITY OF KINGSTON

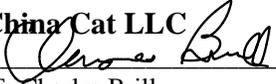
By: _____

NAME: Steven T. Noble

TITLE: Mayor

DATE: _____

350 China Cat LLC

By:  _____

NAME: Charles Brill

TITLE: Member

DATE: November, 15 2023 _____

SCHEDULE A
SCOPE OF SERVICES

1. The Recipient shall create three affordable housing units at 350 Broadway (“Program Project Site”) by rehabilitating three currently vacant units.
2. The Recipient shall procure a contractor to perform each approved scope of work. The Recipient shall comply with the procurement requirements of the Office of Management and Budget’s (“OMB”) Uniform Guidance, 2 CFR Part 200, and with its own procurement policies and procedures. At a minimum, the Recipient shall solicit bids from at least two (2) contractors who are licensed under applicable New York State law, rules, and regulations.
3. The City shall not be a party to nor is it liable for any contractual payments to any contractors, subcontractors, or other third parties engaged by the Recipient to perform program Projects. Payments to any contractors, architects, or other third parties are the sole responsibility of the Recipient.
4. The Recipient shall be responsible for compliance with all applicable environmental and zoning laws, rules, and regulations for each Program project, including, without limitation, all asbestos-related requirements of the New York State Department of Environmental Conservation Division of Materials Management. In the event that asbestos-containing materials (“ACM”) are encountered at the site of a Program project, the Recipient shall suspend work to allow for abatement and removal of the ACM. The abatement and removal shall be performed in accordance with 12 NYCRR Part 56 by a contractor possessing a valid asbestos-handling license. The cost of such abatement and removal will be added to the scope of work for the project.
5. The Recipient shall manage all day-to-day aspects of Program projects, including on-site monitoring and inspections. The Recipient shall conduct inspections throughout the course of each project to ensure that the materials, quality and methods of construction meet the Recipient’s standards and are in compliance with all applicable laws, rules, and regulations and with generally accepted construction industry standards. The Department reserves the right to access Program project sites, with 72 hours’ notice to the Recipient, in order to monitor and evaluate progress, and the Recipient’s agreements with its contractors shall contain a provision permitting such access. The City assumes and shall have no liability for any inspection or non-inspection of project progress in any stage of completion.
6. The Recipient shall secure, either as part of its agreement with the contractor or at the Recipient’s own expense, any and all required permits, fees, approvals, and/or other charges required by law to perform each Program project.
7. Grant funds may be used for essential construction or rehabilitation activities including but not limited to roof repair/replacement, upgrade of electrical systems, environmental remediation, windows, accessibility ramps, plumbing, and heating systems. The final determination as to whether a construction or rehabilitation activity is eligible for reimbursement will be within the sole and exclusive judgment of the City. Funds may not be used for acquisition costs, pre-development activities, beautification, cosmetic repairs, or costs associated with the rehabilitation of commercial spaces.
8. After completing the rehabilitation or construction work the Recipient commits to renting the property to residents making no more than 60% of Area Median Income based on the latest HUD Guidelines for Ulster County which are published annually on <https://kingston-ny.gov/housing>. The maximum allowable rent level shall be based on 60% Area Median Income, including utility costs, based on the latest HUD Guidelines for Ulster County which are published annually on <https://kingston-ny.gov/housing>. The Recipient shall establish standards for screening prospective tenants for income eligibility and shall employ appropriate monitoring and safeguards to ensure the continued Program eligibility of the household. The Owner shall maintain complete

and accurate records pertaining to the income eligibility of each tenant and shall permit, upon five (5) business days' notice to the Recipient, any duly authorized representative of the City to inspect such records.

9. A mortgage lien will be placed on the property for the total amount of the grant award for a compliance period of twenty (20) years. If the subject property is transferred or sold within the first three (3) years, the full amount of the grant award must be repaid. During years four (4) through twenty (20), the amount due will decrease annually according to a repayment schedule (Table A). If the property remains under the same ownership for the duration of the compliance period, a satisfaction of mortgage will be filed and the lien released at the end of the twenty (20) years. For rental properties, a deed restriction which sets forth maximum allowable rent levels based on 60% Area Median Income (as published annually for the Kingston, NY MSA by the U.S. Department of Housing and Urban Development) will also be placed on the property for a compliance period of twenty (20) years. The City reserves the right to recapture the entire amount of the grant if the property is found to be out of compliance with the 60% Area Median Income rent restrictions for the three subject units.

months 0-12	100%
Months 13-24	100%
Months 25-36	100%
Months 37-48	95%
Months 49-60	90%
Months 61-72	85%
Months 73-84	80%
Months 85-96	75%
Months 97-108	70%
Months 109-120	65%
Months 121-132	60%
Months 133-144	55%
Months 145-156	50%
Months 157-168	45%
Months 169-180	40%
Months 181-192	35%
Months 193-204	30%
Months 205-216	25%
Months 217-228	20%
Months 229-240	15%
Months 240+	N/A (extinguished)

Table A-Grant award declining balance schedule

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The Recipient's total award shall not exceed the amount of **TWO HUNDRED TWENTY-FIVE THOUSAND AND 00/100 (\$225,000.00) DOLLARS** for the Term of this Agreement.
2. As part of the total award, the Recipient may receive up to **SEVENTY-FIVE THOUSAND AND 00/100 (\$75,000.00) DOLLARS** per unit.
3. The Recipient shall invoice the City's Office of Housing Initiatives using the form prescribed in Exhibit 1 only upon final completion of all construction work, the issuance of a Certificate of Occupancy from the City's Building Department for all three affordable housing units, and the City's receipt, review, and acceptance of expense documentation.
4. Funds under this agreement will only be provided to reimburse eligible costs related to the construction and rehabilitation of the Program Site. The Recipient shall submit original invoices to the City for payment.
5. The Recipient's invoices must contain, or have attached, sufficient supporting detail, as reasonably required by the City, to verify the claim for each affordable housing unit created. In submitting invoices, the Recipient shall also submit expense documentation showing a 50% Program cost match.
6. In no event shall claims be submitted in advance or accrued prior to expenditure.
7. The City will remit payment to the Recipient within sixty (60) days of approval of the invoice by the Director of Housing Initiatives of the City's Department of Housing Initiatives and the City Comptroller.
8. Notwithstanding any other term or provision of this Agreement, including this Schedule B, the Recipient's invoices, together with all documentation required, must be promptly and timely submitted. The City reserves the right to reject payment of invoices that are submitted more than one hundred twenty (120) days after the required submission date set forth above, regardless of whether the service, work, or delivery was rendered.
9. The Recipient agrees to meet any additional invoicing requirements that the City may from time to time require, with reasonable notice to the Recipient.

PLEASE BRING THESE INSURANCE REQUIREMENTS TO YOUR INSURANCE AGENT TO ENSURE PROPER COVERAGE AND LIMITS ARE IN PLACE. FAILURE TO PROVIDE CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIREMENTS BELOW SHALL DELAY CONTRACT EXECUTION.

SCHEDULE C
CITY OF KINGSTON CONTRACT INSURANCE REQUIREMENTS

I. CONDITIONS OF INSURANCE

Unless otherwise authorized by the Mayor, strict adherence to this schedule is required. Any deviation without prior authorization from the Mayor will result in a delay in the finalization of this Agreement.

The Recipient shall submit copies of any or all required insurance documents as and when requested by the City. Upon policy renewal, the Recipient shall submit updated insurance policy information.

II. CERTIFICATES OF INSURANCE

Prior to commencing work under this Agreement, the Recipient shall file all proper Certificates of Insurance with the City.

The Certificates of Insurance shall include:

- a. Name and address of Insured
- b. Issue date of certificate
- c. Insurance company name
- d. Type of coverage in effect
- e. Policy number
- f. Inception and expiration dates of policies included on the certificate
- g. Limits of liability for all policies included on the certificate
- h. **“Certificate Holder” for all certificates shall be the City of Kingston, 420 Broadway, Kingston, New York 12401.**

If the Recipient’s insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the City shall be provided with a new certificate indicating the replacement policy information as requested above. The City requires thirty (30) days prior written notice of cancellation [ten (10) days for non-payment of premium] from the Insurer, its agents or representatives.

The Recipient agrees to indemnify the City of Kingston for any applicable deductibles and self-insured retentions.

III. WORKERS’ COMPENSATION AND DISABILITY INSURANCE

The Recipient shall take out and maintain during the life of this Agreement, Workers’ Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed at the site of the project, and shall provide Certificates of Insurance evidencing this coverage to the City.

If the Recipient is not required to carry such insurance, the Recipient must submit form CE-200 attesting to the fact that it is exempt from providing WC and/or DB Insurance coverage for all of its employees. The manner of proof related to WC and DB Insurance is controlled by New York State Laws, Rules and Regulations. “ACORD” forms are not acceptable proof of WC and/or DB Insurance.

IV. WORKERS’ COMPENSATION REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Recipient) seeking to enter into a contract with a municipality (the City) must provide one of the following forms to the municipal entity it is entering into a contract with. The Recipient should contact their insurance agent to obtain acceptable proof of WC coverage:

- Form C-105.2 – “Certificate of NYS Workers’ Compensation Insurance” **or**
- Form U-26.3 – “Certificate of Workers’ Compensation Insurance” issued by the New York State Insurance Fund **or**
- Form SI-12 – “Affidavit Certifying that Compensation has Been Secured” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Recipient is self-insured **or**

- Form GSI-105.2 – “Certificate of Participation in Workers’ Compensation Group Self-Insurance” issued by the Self-Insurance administrator of the group **or**
- Form GSI-12 – “Certificate of Group Workers’ Compensation Group Self-Insurance” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Recipient is self-insured.

If the Recipient is not required to carry WC coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

V. DISABILITY BENEFITS REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the Recipient) seeking to enter into a contract with a municipality (the City) must provide one of the following forms to the municipal entity it is entering into a contract with. The Recipient should contact their insurance agent to obtain acceptable proof of DB Insurance Coverage:

- Form DB-120.1 – “Certificate of Insurance Coverage Under the NYS Disability Benefits Law” **or**
- Form DB-155 – “Compliance with Disability Benefits Law” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Recipient is self-insured.

If the Recipient is not required to carry DB Insurance coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

VI. COMMERCIAL GENERAL LIABILITY INSURANCE

The Recipient shall take out and maintain during the life of this Agreement, such bodily injury liability and property damage liability insurance as shall protect it and the City from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Agreement, whether such operations be by the Recipient, by any subcontractor, or by anyone directly or indirectly employed by either of them.

It shall be the responsibility of the Recipient to maintain such insurance in amounts sufficient to fully protect itself and the City, but in no instance shall amounts be less than the minimum acceptable levels of coverage set forth below:

Bodily Injury Liability and Property Damage Liability Insurance in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence, and in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

Other Conditions of Commercial General Liability Insurance:

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
 1. Contractual Liability
 2. Independent Contractors
 3. Products and Completed Operations
- c. “Additional Insured” status shall be granted to “City of Kingston, 420 Broadway, Kingston, New York, 12401,” shown on the Commercial General Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

VII. UMBRELLA LIABILITY OR EXCESS LIABILITY INSURANCE

Umbrella Liability or Excess Liability Insurance shall be provided by the Recipient in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS**.

NOTE: As long as all minimum underlying limits have been met, insurance limits may be a total combined limit of the Umbrella/Excess Liability limits and the underlying liability insurance limits. The Umbrella/Excess Liability coverage MUST be written on a follow-form (drop down) basis to the underlying insurance coverage with no additional exclusions.

“Additional Insured” status shall be granted to “City of Kingston, 420 Broadway, Kingston, New York, 12401,” shown on the Umbrella policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

VIII. AUTOMOBILE LIABILITY INSURANCE

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the Recipient, with a minimum Combined Single Limit (CSL) of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS.**

Coverage shall include:

- a. All owned vehicles
- b. Any hired automobile
- c. Any non-owned automobile
- d. “Additional Insured” status shall be granted to “City of Kingston, 420 Broadway, Kingston, New York, 12401,” shown on the Auto Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

SCHEDULE D
Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) **Equal Employment Opportunity**. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) **Davis-Bacon Act**, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) **Contract Work Hours and Safety Standards Act** ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (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 recipient or subrecipient 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 recipient or subrecipient 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) **Clean Air Act** ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) **Debarment and Suspension** (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) **Byrd Anti-Lobbying Amendment** ([31 U.S.C. 1352](#)) - 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 non-Federal award.
- (J) **Procurement of Recovered Materials.** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must 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 CFR 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 program for procurement of recovered materials identified in the EPA guidelines.
- (K) **Prohibition on certain telecommunications and video surveillance services or equipment.**
 - (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a 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. 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).
 - (i) 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).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) 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.

- (b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(L) **Domestic Preferences for Procurements.**

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of 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 subawards including all contracts and purchase orders for work or products under this award.
- (b) 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 non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(M) **Energy Efficiency in Energy Consuming Products.**

- (a) Definition. As used in this clause – Energy efficient product
 - (1) Means a product that –
 - (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star ® trademark Label; or
 - (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.
 - (2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).
- (b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e. Energy Star ® products or FEMP-designated products) at the time of contract award, for products that are-
 - (1) Delivered;
 - (2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
 - (3) Furnished by the Contractor for use by the Government; or
 - (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
- (c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless-
 - (1) The energy-consuming product is not listed in the Energy Star ® Program or FEMP; or
 - (2) Otherwise approved in writing by the Contracting Officer.
- (d) Information about these products is available for –
 - (1) Energy Star ® <http://www.energystar.gov/products>; and
 - (2) FEMP at <https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies>.

SCHEDULE E

U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS

1. Recipient agrees to comply with the requirements of section 603 of the Social Security Act (the “Act”), regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
2. Federal regulations applicable to this Agreement include, without limitation, the following:
 - a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. 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.
 - f. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - g. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - h. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - i. Generally applicable federal environmental laws and regulations.
3. Statutes and regulations prohibiting discrimination applicable to this Agreement include, without limitation, the following:
 - a. 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;
 - b. 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;
 - c. 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;
 - d. 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; and

- e. 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.
4. **Remedial Actions.** In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.
5. **Hatch Act.** Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
6. **False Statements.** Recipient understands that making false statements or claims in connection with this award 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.
7. **Publications.** Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
8. **Debts Owed the Federal Government.**
 - a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 8(a). Treasury will take any actions available to it to collect such a debt.
9. **Disclaimer.**
 - a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
 - b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.
10. **Protections for Whistleblowers.**
 - a. In accordance with 41 U.S.C. § 4712, Recipient 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.

- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of the Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
 - c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
11. **Increasing Seat Belt Use in the United States**. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient 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.
12. **Reducing Text Messaging While Driving**. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient is encouraged to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

SCHEDULE F
FEDERAL AWARD IDENTIFICATION

- Recipient Name: 350 China Cat LLC
- Recipient's Unique Entity Identifier:
 - Employer Identification Number: **93-2009799**
 - Unique Entity Identifier (UEI): **RDPTJJ5L3L14**
- Federal Award Date: **May 26, 2021**
- Amount of Federal Funds Obligated to Recipient: **\$225,000.00**
- Total Amount of Federal Funds Obligated to Recipient by the City of Kingston, including Current Financial Obligation: **\$225,000.00**
- Name of Federal Awarding Agency: **United States Department of the Treasury**
- Name of pass-through entity: **City of Kingston**
- Contact information for awarding official of the City of Kingston:
 - Steven T. Noble, Mayor**
 - 420 Broadway**
 - Kingston, NY 12401**
 - [**mayor@kingston-ny.gov**](mailto:mayor@kingston-ny.gov)
 - (845)-334-3904**
- Assistance Listings Number: **21.027**
- Title of Assistance Listing: **Coronavirus State and Local Fiscal Recovery Funds**
- This award is not for Research and Development (R & D).
- Indirect Cost Rate for the Federal Award (Including if the de minimis rate is charged): _____

EXHIBIT 1
DISBURSEMENT REQUEST FORM

PROJECT(S): 350 Broadway

Dated as of the _____ day of _____, 20__

I, the undersigned and authorized representative of 350 China Cat LLC. (the "Recipient"), hereby certify and agree as follows:

1. All representations and warranties of the Recipient as set forth in the Recipient Agreement (the "Agreement") effective as of November 15, 2023, between the City of Kingston (the "City") and the Recipient are still valid and effective as of today's date.
2. This request is being delivered pursuant to the Agreement. All capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement.
3. The City is hereby requested to make a disbursement under the Agreement in the amount of \$_____ for (check all that apply):

___ Work performed on the above-referenced Project(s).

4. In support of this disbursement requested, the Recipient submits the following supporting documentation in accordance with Schedule B of the Agreement (ATTACH ADDITIONAL SHEETS IF NECESSARY TO LIST ALL DOCUMENTATION BEING SUBMITTED):

5. The Subrecipient has determined that such project costs are reasonable, necessary, and allocable to the Project(s) under generally accepted governmental accounting standards. Monies requested for disbursement herein reflect actual costs for administrative costs and/or materials and services that were used for the sole purpose of completing the project stated above, and none of these

monies are to be expended, in part or in full, for any other purpose.

6. This disbursement if made, together with the prior disbursements made under the Agreement, will not exceed TWO HUNDRED TWENTY FIVE THOUSAND AND 00/100 (\$225,000.00) DOLLARS.
7. If this Disbursement Request Form includes a request for a disbursement for Work performed, the Recipient represents and warrants that it has obtained lien releases on the above-referenced Project(s) from all contractors, subcontractors, and other third parties who were engaged by the Recipient to perform Work on the Project(s) and has attached all such lien releases to this Subaward Disbursement Request as part of its supporting documentation.
8. The Recipient hereby represents and warrants that it is not in default under the Agreement, that no event has occurred which, with the passage of time or the giving of notice or both, would become a default thereunder, that it has performed all of covenants and agreements that it is required to perform under the Agreement, that the making of the payment requested has been duly authorized by the Recipient, and that no change in circumstances has occurred, or will occur upon the making of the payment hereby requested, which would constitute a breach or a default under the Agreement.
9. All amounts requested hereunder are for eligible project costs which have not been included in any previous disbursement made to the Recipient.

Date: _____

350 China Cat LLC

By: _____

Name: _____

(Please Print)

Title:

EXHIBIT 2

RECIPIENT CERTIFICATION



Steven I. Noble
Bill Reynolds
Mayor

CITY OF KINGSTON
Economic Recovery Plan
American Rescue Plan Act



ARPA Manager

CITY OF KINGSTON, NY
ARPA Affordable Housing Fund
Applicant Certification

Definitions:

City of Kingston = "the City"
ARPA Affordable Housing Fund= "the Program"
Applicant = "the Applicant"

In connection with the City of Kingston's ARPA Affordable Housing Fund, funded by the federal American Rescue Plan Act of 2021, the undersigned, who is an authorized representative of the applicant listed below, acknowledges and agrees on behalf of the Applicant, that the City may rely on the certifications below to determine the Applicant's eligibility for receipt of a grant under the Program.

By executing this Applicant Certification, the Applicant hereby certifies to the following (please initial next to each of the certifications below):

- SR* 1. The undersigned signatory: (a) is a duly authorized owner and representative of Applicant; (b) except to the extent Applicant is a cooperative business entity, holds at least 20% of the outstanding ownership interest in Applicant; and (c) has full authority to make the certifications referenced herein on Applicant's behalf.
- SR* 2. Applicant represents, warrants, and agrees that it has the full authority to make the certifications referenced herein.
- SR* 3. Applicant acknowledges and agrees that the City reserves the right to demand the return of all or any portion of the grant funds if any of the certifications made herein are determined to be false or not adhered to.
- SR* 4. Applicant acknowledges that the City is subject to the New York Freedom of Information Law and any information within its custody and/or control may be subject to disclosure. Applicant acknowledges that the City may publicly release information regarding any ultimate grant award, including but not limited to, Applicant's name, address, business activities, owner(s) information, and grant award amount. Applicant hereby authorizes the City to make such public statements regarding Applicant for purposes of the foregoing.
- SR* 5. Applicant represents and warrants that Applicant meets all eligibility requirements for a grant award under the Program.
- SR* 6. Applicant acknowledges and agrees to the 20-year affordability requirements of the program and that after completing the rehabilitation or construction work the applicant must commit to selling or renting the property to residents making no more than 60% of Area Median Income based on the latest HUD Guidelines for the Kingston, NY MSA.

- CB 7. Applicant is in substantial compliance with applicable federal, state, and local laws, regulations, codes, and requirements.
- CB 8. Applicant does not owe any federal or state taxes that remain due for any periods prior to July 15, 2020, unless such outstanding balance is covered by an approved repayment plan, deferral plan, or other applicable agreement with the appropriate taxing authority. Applicant is current on all municipal taxes and fees and has a record of timely payment on these items including but not limited to property taxes, water and sewer charges, and other types of loan accounts.
- CB 9. Applicant confirms that receipts submitted for reimbursement from the Program are for expenses that have not been previously, and will not be, submitted for reimbursement by another source. Applicant understands that this is a reimbursement program; award payments will only be made upon final completion of all construction work, the issuance of a Certificate of Occupancy from the City's Building Department, and the City's receipt, review, and acceptance of expense documentation.
- CB 10. Applicant has site control over the property on which grant funds will be used.
- CB 11. If awarded, grant funds will only be used to cover essential construction or rehabilitation activities.
- CB 12. No owner of greater than 10% of the equity interest in Applicant: (a) has within the prior three years been convicted of or had a civil judgment rendered against such owner, or has had commenced any form of parole or probation (including probation before judgment), for (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, (ii) violation of federal or state anti-trust or procurement statutes, or (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or (b) is presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in subparagraph (a) above.
- CB 13. Applicant represents and warrants that all demographic information (to the extent Applicant has elected to provide such information), including if applicable, information with respect to owners' socially and economically disadvantaged status, and any other information provided by Applicant in its application regarding the ownership of Applicant, is true and accurate.
- CB 14. It is understood that applicants stating they are MWBE, meet one or more of the following definitions:
Under Article 15-A of the New York State Executive Law, an MBE is a business enterprise in which at least 51% is owned, operated, and controlled by citizens or permanent resident aliens who are meeting the ethnic definitions listed below:
- Black: Persons having origins from any of the Black African racial groups.
 - Hispanic: Persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Native American or Latin American origin, regardless of race.
 - Asian-Pacific: Persons having origins from the Far East, Southeast Asia or the Pacific Islands.
 - Asian-Indian Subcontinent: Persons having origins from the Indian subcontinent.
 - Native American or Alaskan Native: Persons having origins in any of the original peoples of North America.
- Under Article 15-A of the New York State Executive Law, a WBE is a business enterprise in which at least 51% is owned, operated, and controlled by citizens or permanent resident aliens who are women.
- CB 15. Applicant understands that a maximum of \$300,000 is available to any one property owner.
- CB 16. Applicant acknowledges that Applicant's eligibility for the Program and any grant award will be determined based, in part, on the tax and other documents and information provided by Applicant, and that

the City will rely on such determination and tax and other documents in making any grant award to Applicant. In furtherance of the foregoing, Applicant represents and warrants that all documentation, statements and information provided by Applicant on and in connection with Applicant's application under this Program are true, accurate and complete in all material respects and that neither Applicant nor any other authorized person on behalf of Applicant has made or will make any material misrepresentations in connection with Applicant's application for a grant award under this Program. Applicant further affirms that the tax return information it will provide in connection with the Program is identical to the tax return information submitted to the Internal Revenue Service. Applicant understands, acknowledges, and agrees that the City and its authorized representatives may share such tax and other information with local, state and federal authorized representatives, including without limitation for the purpose of compliance with federal, state, or local laws and regulations.

CB 17. Applicant agrees to comply state and federal laws and regulations regarding fair housing and equal opportunity. No person in New York state shall on the grounds of race, creed/religion, color, national origin, sexual orientation, gender identity or expression, military status, sex, age, disability, marital status, lawful source of income, or familial status be excluded, denied benefits, or subjected to discrimination under any program funded in whole or in part by the Program.

CB 18. Applicant certifies and agrees: (a) that all representations, warranties, certifications, and acknowledgements contained in this Application Certification are true and correct; and (b) that Applicant has complied and will comply with all of the requirements of this Program. In the event the City demands the return of all or any portion of any grant funds received by Applicant, Applicant will be responsible for all costs and expenses incurred by the City with respect to the collection of the return of such grant funds including, without limitation, attorneys' fees.

CB _____ Sep 18 2023
Signature Date

Charles Brill _____ Managing Member _____
Printed Name Title

350 China Cat LLC _____ 93-2009799 _____
Applicant Business Name EIN #/SSN #/ITIN #