

**TOWN OF UNION  
LOCAL DEVELOPMENT CORPORATION  
MEETING MINUTES  
THURSDAY, SEPTEMBER 22, 2022**

**DRAFT**

**SYNOPSIS OF MEETING**

The Town of Union Local Development Corporation met for a regular meeting on Thursday, September 22, 2022 in the Town of Union Board Meeting Room.

**I. THE MEETING WAS CALLED TO ORDER AT 8:01 A.M.**

MEMBERS PRESENT: Stephen Trichka, Diane Julian, Gary Leighton, James Peduto, Timothy Strong

MEMBERS ABSENT: Mary O'Malley-Trumble, Jeffrey L'Amoreaux

OTHERS PRESENT: Rosemarie Pope (LDC Board Attorney)  
Gina Middleton (Coughlin & Gerhart)

STAFF PRESENT: Joseph Moody (LDC Director), Robin Shimer (Admin. Asst.)

**II. APPROVAL OF THE MINUTES**

The Minutes of the regular LDC Board Meeting of August 18, 2022 were reviewed and approved, as written.

Motion: Jim Peduto  
Motion 2<sup>nd</sup>: Gary Leighton  
Motion: To approve the regular LDC Board Meeting Minutes of August 18, 2022, as written.  
Vote: Motion approved [5 - Yes, 0 - No, 2 - Absent, 0 - Abstain]

**III. PRESIDENT'S REMARKS**

President Trichka extended a warm welcome to the LDC Board meeting attendees.

**IV. DIRECTOR'S REMARKS**

Director Moody offered Jim Peduto and his family the Boards condolences for the loss of former long-time LDC Board Member, Ross Peduto.

**V. OLD BUSINESS**

- A. Mr. Moody provided for LDC Board members' review and commentary the proposed LDC grant programs disbursing \$1,500,000.00 of American Rescue Plan Act (ARPA) funds. Those programs are comprised of \$250,000.00 for a Kick-Start Entrepreneurial Grant Program, \$250,000.00 for a Small Business Sustainability Grant Program, \$250,000.00 for a Project Specific Infrastructure Improvement Grant Program, \$500,000.00 for a Reimagine Union Demolition & Site Prep Grant Program, and \$250,000.00 for a 50/50 Commercial Façade Grant Program.

Mr. Moody proposed two aspects for the Board to further address (1) refinancing of existing debt and (2) determination of whether start-up businesses are eligible for Kick-Start grant funds only, or if they're eligible for three other proposed grant program funds except for the Sustainability program. The Board maintains that all grant applicants should only be eligible to apply for one of the grant programs being offered as the intent is to not have multiple grant requests from the same entity. A start-up may be eligible to apply for the Kick-Start program or one of the other three programs discussed depending on what their project entails. Subsequent discussion determined that use of grant funds for debt refinancing may be considered on a case by case basis based on the circumstances surrounding the debt.

After the completion of proposed grant programs discussion, President Tricka requested a motion to ratify a resolution approving the five proposed LDC ARPA grant programs in the amounts as presented, subject to potential discretionary reallocation of the grant program amounts as determined by the Board at any point in the future.

Motion: Diane Julian

2<sup>nd</sup> Motion: Tim Strong

Motion: To approve the five proposed Local Development Corporation (LDC) 2021 American Rescue Plan Act (ARPA) Grant Programs, and their correlative distribution of \$1,500,000.00 in ARPA funds, in the amounts of \$250,000.00 for a Kick-Start Entrepreneurial Grant Program, \$250,000.00 for a Small Business Sustainability Grant Program, \$250,000.00 for a Project Specific Infrastructure Improvement Grant Program, \$500,000.00 for a Reimagine Union Demolition & Site Prep Grant Program, and \$250,000.00 for a 50/50 Commercial Façade Grant Program, in the amounts stated in the fact sheet description of each grant program, subject to discretionary reallocation of the grant programs' amounts at any point in the future.

Vote: Motion approved [5 - Yes, 0 - No, 2 - Absent, 0 - Abstain]

Mr. Moody noted that the grant programs necessitate bridge funding by recipients. He inquired if the Kick-Start Entrepreneurial Program should allow for pre-performance disbursement of funds given the nature of any start-up program and lack of capital. The Board members were disinclined to support disbursement of grant funding prior to business attainment of any performance requirements.

- B. There was discussion of the draft Town of Union LDC 2021 American Rescue Plan Act (ARPA) grant application. Mr. Moody noted the benefit of having early interaction with

applicants. He proposed requiring grant aspirants to meet with him prior to starting a grant application. ARPA grant program fact sheets will be available online for each of the five programs, however, in order to obtain an application Mr. Moody prefers to discuss directly with the applicants to hear about their proposed project so he may best direct them to the grant program that will fit their particular need. Mr. Moody knows it will be more time consuming for LDC staff, but if he is able to check off for the applicant what they may or may not need to submit in advance, based on the particular program they will be applying for, it will save the applicant and the staff time in the long run. The intent is to not have a fillable application on-line.

- C. Discussion pertained to the 2021 American Rescue Plan Act (ARPA) Funding Agreement between the Town of Union and the Town of Union Local Development Corporation (LDC). Counselor Pope is in the process of document drafting. Discussion included conditional party compliance obligations and actions. A Special Meeting for one week hence was scheduled for further consideration. There was general support for the proposed agreement, subject to final editing approval. Mr. Moody then called for a Special Meeting of the LDC Board to be held on September 29, 2022.

## **VI. NEW BUSINESS**

- A. Mr. Moody and the LDC Board members discussed the timeframe and content of a pending media release regarding the new grant programs.

## **VII. OTHER BUSINESS**

- A. Mr. Moody said the proposed project at the former Red Carpet Inn, has changed to a multi-family market-rate residential housing project from a proposed motel renovation. He said that Broome County government has previously conveyed \$350,000.00 in ARPA funds to the Town LDC for an economic development project for the 749 W. Main Street vacant building. That BC funding will stay in place, however, the previous LDC façade loan for the motel of \$100,000.00 will need to be rescinded if the residential project continues to move forward. Mr. Moody added that the Town of Union is also applying for a \$2,000,000.00 Restore NY grant via a municipal program with Empire State Development for the new developers proposed \$5,000,000.00 conversion of the motel to residential housing.
- B. Mr. Moody mentioned that the SEPP funding in the amount of approximately \$840,000.00 in BC ARPA funds to the Town LDC for the proposed mixed-use commercial building on Washington Avenue will remain in place as SEPP will be applying for additional NYSHCR funding for the project.
- C. Mr. Moody informed the LDC Board members that the Green Mountain Electric Supply (GMES) distribution facility, at the former Endicott Kmart building and plaza, is moving forward and that the project developer is awaiting word on an Endicott DRI grant funding request, and the Town LDC will be asked in the very near future to review and accept \$1,000,000.00 in allocated BC ARPA for this \$12,000,000.00 plus project, with

the subsequent allocation of said BC ARPA funds by the Town LDC for this economic development project.

## VIII. ADJOURNMENT

- A. President Trichka inquired if there were additional topics for the LDC Board members' consideration. In recognition of there being no other matters to come before the Board, he then requested a motion to adjourn the meeting.

Motion: Tim Strong  
Motion 2<sup>nd</sup>: Diane Julian  
Motion: To adjourn the regular LDC Board meeting of September 22, 2022.  
Vote: Motion approved [5 - Yes, 0 - No, 2 - Absent, 0 - Abstain].

The meeting was adjourned at 8:58 a.m.

Respectfully submitted,

Joseph M. Moody  
Director

## AGREEMENT

This Agreement, dated September \_\_, 2022, between the Town of Union (“Town”) and the Town of Union Local Development Corporation (“LDC” or “LDC”).

### RECITALS

A. Sections 602(b) and 603(b) of the Social Security Act, as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021), authorizes the U.S. Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus Local Fiscal Recovery Fund (Recovery Funds).

B. The Town is a recipient of certain Recovery Funds and is authorized to utilize the Recovery Funds in accordance with the rules and regulations promulgated by Treasury. Specifically, the procurement for distribution of the Recovery Funds require compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 (Uniform Guidance).

C. The Uniform Guidance allows for a non-competitive procurement where the public exigency or emergency will not permit a delay from publicizing a competitive solicitation. 2 C.F.R. § 200.320.

D. The Town desires to provide \$1,500,000 of its Recovery Funds to the LDC to develop, implement and administer grant programs to assist small businesses in the Town of Union. The LDC is willing accept \$1,500,000 of Recovery Funds from the Town and has the resources to develop, implement, and administer loan/grant programs to assist small businesses in the Town of Union.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

### **1. LDC’S SCOPE OF SERVICES**

1.1 Scope of Services. The LDC agrees to be a subrecipient of the Recovery Funds and develop, implement and administer grant programs to assist small businesses in the Town. The Town’s funding may only be used for these grant programs. Upon full execution of this Agreement the Town will deposit \$1,500,000 into an LDC checking account to be created and uses exclusively for ARPA funds from the Town for the grant programs.

1.2 Changes in Scope of Services. No change(s) shall be made to the Scope of Services except by written Agreement amendment. To obtain an Agreement amendment, the LDC must submit a revised Scope of Services with a written request for authorization for a Scope of Services amendment. If authorized, an Agreement amendment shall be drafted and must be approved by the Town Board, and executed by duly authorized signatories, before the amendment will become effective.

### **2. AMOUNT AND NATURE OF ASSISTANCE BY TOWN**

2.1 Agreement Amount. Subject to all of the terms, covenants, and conditions of this Agreement, the Town will fund the amounts for the small business grant programs developed, implemented and administered as provided above. The Town shall serve as the fiscal agent for the Recovery Funds. The LDC agrees to allocate all of the Recovery Funds under its control as provided by the Town for the small business grant programs. The LDC agrees to utilize the funds available under this Agreement to supplement rather than supplant funds otherwise available. The LDC shall not use the Recovery Funds

received from the Town in any other manner except as provided in this Agreement. Wrongful expenditure of the Recovery Funds will constitute a breach of this Agreement and the Town shall have the right to terminate this Agreement with the LDC under the terms and conditions specified in this Agreement.

The Town shall:

Clearly identify the subaward to the LDC and include the following information at the time of the subaward, and if applicable, any changes in subsequent subaward modifications. When the information is not available, the Town must provide the best information available to describe the Federal award and subaward:

A) Federal Award Identification;

- 1) LDC name (which must match registered name in DUNS);
- 2) LDC's DUNS number;
- 3) Federal Award Identification Number (FAIN);
- 4) Federal Award Date;
- 5) Subaward Period of Performance Start and End date;
- 6) Amount of Federal Funds Obligated by this action;
- 7) Total Amount of Federal Funds Obligated to the LDC;
- 8) Total Amount of the Federal Award;
- 9) Federal award Project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
- 10) Name of Federal awarding agency, pass-through entity, and contact information for awarding official;
- 11) CFDA Number and name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
- 12) Identification of whether the award is Research & Development; and
- 13) Indirect cost rate for the Federal award (including if the de minimis rate is charged.) All requirements imposed by the pass-through entity on the LDC/Subrecipient so that the Federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award.

B) Any additional requirements that the Town may impose on a LDC in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

C) Any approved federally recognized indirect cost rate negotiated between the LDC and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the LDC or a de minimis indirect cost rate as defined in the Code of Federal Regulations.

D) A requirement that the LDC permit the Town and its auditors to have access to the LDC's records and financial statements as necessary for the the Town as a pass-through entity to meet the requirements of 2 C.F.R. §200.331 and § 200.300, "Statutory and national policy requirements," through 2 C.F.R. § 200.309, "Modifications to Period of performance," and Subpart F, "Audit Requirements"; and

E) Appropriate terms and conditions concerning closeout of the subaward.

2.2 Changes in Scope. Any variance in the Scope of Services must be made through an amendment. To obtain an amendment, the LDC must submit a new Scope of Services to the Town with a written request for authorization for an amendment. The Town is authorized to approve Scope of Services amendments as long as the amendment does not increase the total of the Recovery Funds allocated to such grant programs.

2.3 Indirect Costs. If indirect costs are going to be sought for disbursement or reimbursement, LDC will develop an indirect cost allocation plan for determining the said LDC's appropriate share of administrative costs and shall submit such to the Town for advance approval, but any such costs must be in compliance with all federal regulations for reimbursement.

### **3. ENFORCEMENT**

LDC certifies that it is eligible to receive the funds and is liable for recapture of funds if the LDC is found in non-compliance with the laws, rules and regulations governing the use of the grant program funds pursuant to this Agreement. The provisions of this paragraph shall survive the termination of this Agreement.

### **4. RECAPTURE OF EXPENSES**

- A. Any funds that are not expended as authorized under this Agreement must be refunded to the TOWN within fourteen (14) days of receipt of written notice provided by the TOWN.
- B. Any funds that are not expended within the anticipated timeframe under this Agreement are subject to recapture. If requested, a refund to the TOWN must be made within fourteen (14) days of receipt of written notice for a refund provided by the TOWN.
- C. The LDC shall use its best efforts in identifying and recovering grant funds that were expended in error, disallowed due to default by a grant recipient, or unused. The LDC will also report all suspected fraud to the TOWN.

### **5. CERTIFICATION OF COMPLETION**

Upon satisfactory completion of the Close-Out Report and submission of all required documentation, the Town shall provide LDC with a letter that certifies completion. The certification is conclusive determination that the LDC has satisfactorily completed its contractual obligations with respect to the use of the \$1,500,000 in ARPA funds from the Town, subject to federal government review, audit and approval. The Town shall not unreasonably withhold such certification but may qualify such certification consistent with the terms herein.

## **6. AGREEMENT REQUIREMENTS**

6.1 Agreement Administration. The LDC has obtained official authorization from its governing body in the form of a resolution, motion, or similar action authorizing the person identified in the Notice Section of this Agreement to administer and perform the required duties for the administration of this Agreement. Such authorization shall be provided to the Town, if requested.

6.2 Agreement Commencement, Completion, and Renewal. This Agreement shall commence upon execution of both the Town and the LDC. The LDC may use funds to reimburse itself for allowable costs of activities paid for or invoiced to the LDC as defined in the Scope of Work. The LDC agrees to complete the expenditure or justification of expenditure of the Recovery Funds for the period of performance. This Agreement may be renewed in writing for a time period not to exceed three hundred sixty-five (365) days at the Town's sole discretion. Notwithstanding any other language in this Agreement, this Agreement shall remain in effect during any period that the LDC has control over the grant program funds up to the date of July 1, 2025.

6.3 Agreement Extension. No payments will be made to the LDC for costs incurred and paid for or invoiced to the LDC after the Agreement time-period. To obtain a time extension, the LDC must submit a written request for authorization for an Agreement time extension. The Town will respond to such written request within ten (10) business days of its regular Board Meeting or any hold over Board Meeting.

## **7. ADMINISTRATIVE REQUIREMENTS**

7.1 Accounting. The LDC shall comply with the requirements and standards of the Town and ARPA rules and regulations and shall adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The LDC's financial management system shall include, at a minimum, accurate, current, and complete disclosures of expenditures of funds for which reimbursement or disbursement of payment is sought by way of the Recovery Funds; records which adequately identify the source and application of funds for which reimbursement or payment is sought by way of Recovery Funds provided for financially assisted activities; effective control over and accountability for funds for which reimbursement or payment is sought by way of Recovery Funds, real and personal property, and other assets; comparison of actual outlays with budgeted amounts; and records supported by source documentation. The LDC shall maintain Recovery Funds received under this Agreement in separate ledger accounts and not mix funds with other sources; manage funds according to applicable Federal regulations for administrative requirements, cost principles, and audits; and maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are: Financial Managements, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied (it applies to all sources of funds).

7.2 Internal Controls. The Town may from time to time evaluate the LDC to determine if there is a risk of non-compliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate LDC monitoring including the factors listed in 2 C.F.R. § 200.331(b)(1-4). The LDC will operate according to a written set of policies and procedures that define staff qualifications and duties, lines of authority, separation of functions, and access to assets and sensitive documents. Included in these policies and procedures will be written accounting procedures for



approving and recording transactions and the control of cash receipts, disbursements, and cash balances. The LDC's financial policies and lines of authority shall be reviewed during monitoring visits defined in this Agreement.

7.3 Monitoring. The Town shall be allowed to monitor the use of the Recovery Funds, including reviewing financial and programmatic reports provided by the LDC. The Town shall have the right to follow-up and to ensure that the LDC takes timely and appropriate action on all deficiencies pertaining to the Federal award detected through audits, on-site reviews, and other means. The Town may issue a management decision for audit findings pertaining to the Recovery Funds provided to the LDC from the Town as required by 2 C.F.R. § 200.521, "Management decision." The LDC agrees to cooperate and provide all information necessary for the Town to monitor the LDC periodically to ensure compliance with this Agreement, compliance with federal regulations and laws, fiscal responsibility, adequate performance, and any other item of concern relating to the use of Recovery Funds and the provisions defined in this Agreement, including by permitting the pass-through entity and auditors to have access to the LDC's records and financial statements as necessary for the Town as a pass-through entity to meet the requirements of 2 C.F.R. § 200.300, "Statutory and national policy requirements," 2 C.F.R. § 200.309, "Modifications to period of performance," 2 C.F.R. § 200.331, "LDC and grantee determinations," and Subpart F, "Audit Requirements." The monitoring will take the form of at least one site visit of the LDC's place of business and other various requests for information. During the term of this Agreement, the LDC shall be monitored periodically by the Town, both programmatically and financially, to ensure that the program's goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria, are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this Agreement including but not limited to the review and analysis of the financial, programmatic, performance, and administrative issues relative to each program, and will identify areas where technical assistance and other support may be needed. All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the LDC and the Town.

7.4 Documentation and Record-Keeping. The LDC shall maintain all records required by federal and state law that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

7.4.1 Records providing a full description of each activity undertaken;

7.4.2 Records demonstrating that each activity undertaken meets one of the Expenditure Categories identified in the U.S. Department of Treasury Compliance and Reporting Guidance, Appendix 1: Expenditure Categories;

7.4.3 Records required to determine the eligibility of activities;

7.4.4 Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with Recovery Funds;

7.4.5 Financial records as required by 2 CFR Part 200 Performance and Financial Monitoring and Reporting, Sections 200.328, 329, and 331; and

7.4.6 Other records necessary to document compliance with 2 CFR Part 200 Performance and Financial Monitoring and Reporting, Sections 200.328, 329, and 331.

7.5 Records Retention. The LDC will retain all records pursuant to the Town's record retention policy and Federal requirements, whichever period is longer. Records must be retained longer if any litigation, claim, or audit is started before the expiration of the record retention period. Other extensions to the record retention period may apply as specified in 2 C.F.R. § 200.333.

7.6 Client Data. With respect to Projects related to housing, the LDC shall maintain client data demonstrating Project eligibility for services and funding provided. Such data shall include, but not be limited to, Project name, address, income levels or other basis for determining eligibility, and as to any housing related project, ethnicity, special needs, family size, elderly status, and description of services provided. Such information shall be made available to Town or their designees for review upon request.

7.7 Disclosure. The LDC understands that information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Town's or the LDC's responsibilities with respect to services provided under this Agreement, may be prohibited by New York State law.

7.8 Audits and Inspections. All of the LDC's records with respect to any matters covered by this Agreement shall be made available to the Town, as the grantor agency, their designees, or the Federal Government (including but not limited to Treasury, the Comptroller General of the United States, or any of their duly authorized representatives), unless otherwise protected by law, at any time during normal business hours, as often as the Town or grantor agency deems necessary until all required records are turned over to the Town to audit, examine, and make excerpts or transcripts of all relevant data, provided. Any deficiencies noted in audit reports must be fully cleared by the LDC within thirty (30) days after receipt by the LDC. Failure of the LDC to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The LDC agrees to have an annual LDC financial audit conducted in accordance with current Town policy. The LDC will conduct an annual audit conducted in accordance with 2 CFR 200, Subpart F, "Audit requirements," if the LDC expends more than seven-hundred fifty thousand dollars (\$750,000) from Federal awards, in compliance with the Federal Single Audit Act (31 U.S.C. par. 7501-7507), as amended by the Single Audit Act Amendments of 1996 (P.L. 104 to 156). All audits requested by the Town shall be paid for by the Town.

7.9 Quarterly Reports to Town. During the entire Agreement period, the LDC shall prepare and submit to the Town a Quarterly Performance Report. If the scope of the grant programs have been fully completed and implemented, and there will be no further updates, then the quarterly program report for the quarter in which the grant programs were completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the grant programs as deemed necessary by the Town. Notwithstanding anything to the contrary, the LDC shall not be required to provide any of the LDC's confidential or proprietary information in reports provided to the Town. The LDC agrees to submit other reports and records as may be required by the Town from time to time, which are related to the implementation of each Project, adherence to the Agreement, and adherence to federal, state, and local laws and regulations.

7.10 Close-Out Report. The LDC is responsible for the close out of the Recovery Funds received pursuant to this Agreement. The LDC's obligation to the Town shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Town), and determining the custodianship of records. The Town will send the LDC written notification that a Close-Out Report is due when one of the following contractual obligations have been met, and the LDC shall submit the Close-Out Report attached in that letter within sixty (60) days of receiving this notification:

7.10.1 The Recovery Funds have been expended and the Scope of Work has been completed;

7.10.2 The Agreement period has expired; or

7.10.3 The Scope of Work has been completed.

7.11 LDC Obligations. The LDC shall perform all obligations required of LDCs under the rules governing Recovery Funds.

## **8. ACKNOWLEDGEMENT**

The LDC shall acknowledge during the term of the Agreement the contribution of the Town of Union Recovery Funds toward the grant programs in all instances where the grant programs are advertised. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as receiving Recovery Funds. In addition, the LDC will include a reference to the support provided herein in all publications made possible with Recovery Funds made available under this Agreement.

## **9. IMPLEMENTATION**

The LDC, as the case may be, shall have responsibility for day-to-day management of the distribution of the Recovery Funds for the benefit of the grant programs.

## **10. UNFORESEEN DELAY IN PERFORMANCE**

Neither the LDC nor the Town shall be considered in breach or default of its obligations to make satisfactory progress toward the completion of the loan/grant programs in the event of unforeseen delays in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including labor or material delays. The time for performance of the obligations and length of period of restriction on use shall be extended for the period of the unforeseen delay, as reasonably determined by the Town, if the party seeking the extension shall request it in writing of the other party within ten (10) days after the beginning of the unforeseen delay.

## **11. INSURANCE**

The LDC shall be added to the Town's commercial and general liability insurance to protect against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the LDC, its agents, representatives, employees, or contractors, until all of their obligations have been discharged, including satisfaction of any warranty periods under this Agreement. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

11.1 Minimum Scope and Limits of Insurance. The LDC shall provide and maintain personal liability coverage of its Board members and directors.

11.2 Approval. Any modification or variation from the insurance requirements in this Agreement shall have prior approval from the Town, whose decision shall be final. Such action shall not require a formal Agreement Amendment but may be made by administrative action.

## **12. DEFAULT/REMEDIES**

In the event of any default in or breach of this Agreement or any of its terms or conditions by either party, such party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach. In any event, such breach or default shall be remedied within thirty (30) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach not cured (or if cure is not commenced) or remedied within thirty (30) days, the aggrieved party may upon an additional thirty (30) days' notice terminate this Agreement or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations, provided if such default is cured or if cure is commenced within such thirty (30) day period, the termination of this Agreement shall be deemed waived. Notwithstanding the foregoing, in the event of a breach of any term of this Agreement by the LDC, the Town, at its sole election and in addition to any other remedy, may immediately withhold payment of funds until such default is cured and may initiate suspension or termination as set forth below.

## **13. NONDISCRIMINATION AND AFFIRMATIVE ACTION REGARDING EMPLOYMENT**

13.1 Nondiscrimination. The LDC shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, and/or familial status, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment.

13.2 Incorporation of Nondiscrimination Clause into the LDC Activities. The LDC further agrees that the Section 12.1 clause will be incorporated in all contractor/supplier contracts or other agreements entered into in connection with this Agreement.

13.3 Certifications from Contractors, Subcontractors and Suppliers. The LDC shall obtain all contractor, supplier and subcontractor certifications contained in the Agreement documents and that those suppliers and contractors will adhere to all affirmative action requirements.

## **14. COMPLIANCE WITH ALL LAWS**

14.1 Federal, State, and Local Laws. The LDC shall give all notices and comply with all laws, ordinances, rules, building codes, regulations, and lawful orders of any public authority bearing on the performance of activities pursuant to this Agreement. If the LDC observes that any of the Agreement documents are in conflict with any laws, statutes, building codes, or regulations, it shall promptly notify the Town, in writing, and the parties shall execute any appropriate written modification.

14.2 Liability. Should the LDC perform any work knowing it to be contrary to applicable laws, ordinances, rules, building codes, or regulations, and not give proper notice to the Town, it shall assume full responsibility therefore and shall bear all cost incurred due to its negligence. The Indemnification provisions herein shall be applicable to this Article 15.

14.3 Agency Adherence to Federal Regulations and Laws. The LDC agrees to comply with the following laws related to the receipt of Recovery Funds:

14.3.1 The LDC shall comply with the Grant Provisions for the U.S Department of Treasury, American Rescue Plan Act, Coronavirus State and Local Fiscal Recovery Funds.

14.3.2 The LDC shall carry out its responsibilities in compliance with the requirements of Executive Order 11063, as amended by Executive Order 12259; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the prohibitions against age discrimination under the Age Discrimination Act of 1975 (42 U.S.C. § 6101-07); and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (19 U.S.C. § 794).

14.3.3 The LDC shall comply, as applicable, with the requirements of the Davis-Bacon Act (40 U.S.C. § 276a-276a-5), as supplemented by Department of Labor regulations (29 C.F.R. Part 5); and comply with Sections 103 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. § 327-330), as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

14.3.4 The LDC shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations. (41 C.F.R. chapter 60).

14.3.5 The LDC agrees to comply with the Copeland "Anti-Kick Back" Act (18 U.S.C. § 874), as supplemented in Department of Labor regulations (29 C.F.R. part 3).

14.3.6 The LDC agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368m Executive Order 11738), and Environmental Protection Contract regulations (40 C.F.R. part 15).

14.3.7 The LDC agrees to comply with all applicable standards, orders, or regulations issued under Byrd Anti-Lobbying Amendment (31 U.S.C. §

14.3.8 The LDC agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

14.3.9 The LDC agrees to comply, as applicable, with 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principle, and Audit Requirement for Federal Awards.

14.3.10 The LDC agrees that if the Federal government requires the return of any ARPA funds due to non-compliance with this Article 15 or this Agreement, that it shall reimburse the Town for all such reimbursement, and all costs, expenses and fees of the Town as a result.

## **15. DISPUTES**

The laws of the State of New York, without regard to any otherwise applicable choice or conflict of law provisions, will govern this Agreement.

## **16. AVAILABILITY OF FUNDS**

It is expressly understood by the parties hereto that this Agreement has been negotiated and executed in anticipation of receipt of funds by the Town from the federal government which the Town confirms have been received and the ability of the Town to encumber said funds, and that the terms, conditions, and sums payable under this Agreement are subject to any changes or limitations which may be required by the terms of the Town's agreement with the federal government.

## **17. CONSULTATION**

The LDC and the Town hereby agree to consult one another on a timely basis regarding the applicability of this Agreement to any condition which may impact the execution of this Agreement and which may arise during the Agreement period.

## **18. CONTINUING LIABILITY**

The LDC shall have continuing liability after the term of this Agreement for any breach of this Agreement, including failure to perform in accordance with required Federal law, rules, and regulations until after all complaints, investigations, and sanctions, including those arising out of audits performed by Treasury, the Town, or other authorized agencies are resolved. The LDC shall be liable for any fines, penalties or sanctions imposed at any time upon the Town arising as a direct result of the LDC's negligence, breach or malfeasance in the performance of its duties and responsibilities under this Agreement.

## **19. TERMINATION**

19.1 Termination. In accordance with 2 C.F.R. part 200, subpart D, the Town may suspend or terminate this Agreement if a LDC materially fails to comply with any term or condition of this Agreement, or if a LDC fails to maintain a good faith effort to carry out the purpose of this Agreement. If the LDC fails to materially comply with any term of the award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, Town may take one or more of the following actions, as appropriate in the circumstances:

19.1.1 Withhold or seek reimbursement of any payments pending correction of the deficiency by the LDC or more severe enforcement action by the awarding agency;

19.1.2 Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

19.1.3 Wholly or partly suspend or terminate the current award;

19.1.4 Withhold further awards; or

19.1.5 Take other remedies that may be legally available.

19.2 Termination for Convenience. The Town may terminate this Agreement for convenience in accordance with 2 C.F.R. part 200 and the Procurement Code if both parties agree upon the termination and termination conditions. The party initiating the termination shall notify the other party in writing

stating the reasons for such termination. If the other party does not agree this Agreement shall remain in full force and effect. In the event of a termination for convenience, the Town shall not be liable for any direct, indirect or consequential damages as a result.

**20. NOTICE**

Notice shall be provided by and between the Parties in writing by certified mail return receipt or by email with proof of receipt.

Director of the Town of Union Local Development Corporation (LDC)  
3111 East Main Street  
Endwell, New York 13760

IN WITNESS WHEREOF, the parties acknowledge that they have read, understand, approve, and accept all of the provisions of this Agreement.

Town of Union

\_\_\_\_\_  
Richard A. Materese, Supervisor

Town of Union Local Development Corporation

\_\_\_\_\_  
Stephen Trichka, President

