

**MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF ALABAMA DEPARTMENT OF FINANCE
AND
BAPTIST HEALTH CARE FOUNDATION
FOR THE DISTRIBUTION OF CORONAVIRUS STATE FISCAL RECOVERY FUNDS**

This Memorandum of Agreement (the “Agreement”) is made by and between the State of Alabama Department of Finance, at 600 Dexter Avenue, Montgomery, Alabama 36130 (hereinafter referred to as “DOF”), and Baptist Health Care Foundation, an Alabama nonprofit corporation (qualified as a public charity under section 501(c)(3), Section 509(a), and Section 170(c) of the Internal Revenue Code of 1986, as amended), at P.O. Box 241647, Montgomery, Alabama 36037, (hereinafter referred to as the “BHCF”). DOF and BHCF may be referred to herein individually as a “party” and collectively as the “parties.” This Agreement becomes effective on the approval of the parties and the Governor of the State of Alabama.

I. PURPOSE

The federal American Rescue Plan Act of 2021, Public Law No. 117-2, 135 Stat. 4. (“ARPA”) was signed into law on March 11, 2021. ARPA amended the federal Social Security Act to add Section 602 to the Social Security Act, and by doing so, created the Coronavirus State Fiscal Recovery Fund (hereinafter referred to as “the State Recovery Fund”). ARPA appropriated funds from the State Recovery Fund to the State of Alabama and other states to support their response to the impact of COVID-19 on their communities, residents, and businesses; and to aid in efforts to contain COVID-19. Under Section 602 of the Social Security Act, the State Recovery Fund funds may be used to cover costs obligated on or before December 31, 2024 and incurred by the State on or before December 31, 2026, for four broad purposes:

- A. To respond to the COVID-19 public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits; or for aid to impacted industries;
- B. To respond to workers performing essential work during the COVID-19 public health emergency, by providing premium pay to eligible workers who are performing essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- C. For the provision of government services to the extent of the reduction in revenue of the State due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
- D. To make necessary investments in water, sewer, or broadband infrastructure.

The Secretary of the Treasury promulgated initial regulations for purposes of implementing the State Recovery Fund, published in the May 17, 2021, Federal Register, at 86 Fed. Reg. 26786 (the “Interim Final Rule”). The Interim Final Rule clarifies that the State Recovery Fund is intended to build upon and expand the support provided to states and other governments over the

last year, including through the Coronavirus Relief Fund (“CRF”). The Interim Final Rule further provides a non-exclusive list of examples of costs that qualify for payment from the State Recovery Fund funds under one of the four broad categories specified in Section 602 of the Social Security Act, as specified above. In response to public comments to the Interim Final Rule, the Secretary of the Treasury promulgated final regulations in the January 27, 2022, Federal Register, at 87 Fed. Reg. 4338 (the “Final Rule”), which took effect on April 1, 2022. For purposes of this Agreement, funds provided by DOF to BHCF must be used consistent with the requirements of the Final Rule.

The State of Alabama was allocated \$2,120,279,417 from the federal State Recovery Fund. Alabama Act No. 2022-1 (the “Act”) appropriates up to \$36,796,346 of such funds to DOF to be used to support the delivery of health care and related services to citizens of Alabama related to the coronavirus pandemic, including through assisted living facilities (hereinafter referred to as the “Funds”). The Act further provides that such funds may be delegated through memoranda of agreement with the Alabama Department of Public Health, the Alabama Department of Mental Health, Alabama Department of Rehabilitation Services, or any other state entity of competent jurisdiction, health care association or health care provider.

The DOF desires to allocate up to \$600,000 in Funds to BHCF to collaborate with the Joy to Life Foundation (hereinafter referred to as “JtLF”) (2350 Fairlane Drive, Suite 130, Montgomery AL, 36116) to establish a mobile mammography treatment program utilizing two vehicles to provide mammograms and the services of the professional operational staff necessary to operate the mammograms in several medically underserved areas of Alabama. This program will provide much needed and cost-effective care for Alabamians and assist in responding to and mitigating the COVID-19 pandemic and public health emergency in Alabama and the economic impacts thereof.

Notwithstanding any other provision of this Agreement, the Parties acknowledge and agree that BHCF is a “Subrecipient” as that term is defined in Code of Federal Regulations, Title 2, § 200.1. As such, BHCF is responsible for complying with all federal requirements for Subrecipients, including the Single Audit Act and Code of Federal Regulations, Title 2, Part 200, subpart F regarding audit requirements.

The proposed utilization of the Funds has been presented to DOF by BHCF, and DOF has concluded that the proposed utilization of the Funds is necessary to ensure an adequate response to and mitigation of the COVID-19 pandemic and public health emergency in Alabama and the economic impacts thereof. Further, DOF concludes that funding this project using the Funds is an appropriate use of these Funds under both federal and state law. DOF fully supports BHCF in its effort to support and protect the citizens of Alabama.

II. PARTIES’ RESPONSIBILITY

A. BHCF agrees to the following:

1. To use the Funds to carry out BHCF operations in collaboration with JtLF to establish mobile mammography units as described in this Agreement;

2. To comply with all federal requirements applicable to Subrecipients, including the Single Audit Act and Code of Federal Regulations, Title 2, Part 200, subpart F regarding audit requirements;
3. To provide to the State Finance Director's Office by October 15, 2022, and monthly thereafter on the 15th of every month, a report detailing how the funds are being utilized and details of expenditures made since the preceding report, and further provide interim reports as the State Finance Director's Office may determine necessary;
4. To use the funds provided by DOF under this Agreement in accordance with Section 602 of the Social Security Act, the Final Rule and other federal and state law, and for the purposes set forth in this Agreement, and for no other purpose; and
5. To return any funds provided by DOF under this Agreement that remain unspent as of December 31, 2026.

B. DOF agrees to the following:

1. To provide, within fourteen (14) days of the effective date of this Agreement, \$600,000 to BHCF from the State's Funds appropriated pursuant to Alabama Act 2022-1 for the purposes described in this Agreement and for no other purpose; and
2. To make all reports to the federal government required by ARPA.

III. OUTSIDE CONSULTANTS

BHCF may employ outside accounting, legal, or other consultants to assist with the administration of these funds; however, such accounting, legal, or other consultants must be reasonable in amount and comply with audit requirements for use of funds under the Act.

IV. TERMINATION OF AGREEMENT

Except as set forth in this section, this Agreement may be terminated only in a writing signed by each party or representative of each party. If DOF concludes, after a reasonable investigation and in its sole discretion as administrator of the funds, that the funds provided hereunder have been used in a manner inconsistent with federal or state law, DOF may terminate this Agreement immediately upon written notice to BHCF.

V. MISCELLANEOUS PROVISIONS

A. The terms and commitments contained herein shall not constitute a debt of the State of Alabama, which is prohibited by Section 213 of the Official Recompilation of the Constitution of Alabama, 1901, as amended by Amendment No. 26.

B. By signing this Agreement, the parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. A contracting party found

to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

C. In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, the sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this Agreement which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing, where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

D. In order to comply with federal notice requirements relating to the administration of grants and other federal assistance funds, DOF provides the following information to BHCF: this sub-award is provided to BHCF through a grant to the State of Alabama in the amount of \$2,120,279,417 from the United States Treasury via Section 602 of the Social Security Act, as added by Public Law No. 117-2, known as the American Rescue Plan Act of 2021 (“ARPA”), which established the Coronavirus State Fiscal Recovery Fund. This subaward is provided in accordance with the requirements set forth in ARPA and other applicable federal and state law and policy, and BHCF affirms that all information it has provided to DOF relating to this subaward is true and accurate. This subaward does not include research and development. The parties acknowledge and understand that each subrecipient of the funds will be evaluated in accordance with Code of Federal Regulations, Title 2, § 200.331-333 for risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward. Further, each subrecipient’s activities will be monitored as necessary to ensure that the subaward is used for authorized purposes, in compliance with law, and that subaward performance goals are achieved. Other monitoring tools may be implemented on the level of risk imposed by the subrecipient.

E. Code of Federal Regulations, Title 2, § 200.332(f) requires DOF to verify that each subrecipient that is expected to expend \$750,000 or more in Federal awards during a fiscal year have a single or program-specific audit conducted for that year in accordance with the provisions of Code of Federal Regulations, Title 2, § 200.501. The parties acknowledge that DOF has provided notice to BHCF of the audit requirements applicable to the award made by this Agreement and BHCF agrees to comply therewith.

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

VI. AMENDMENTS

This Agreement may only be amended by a writing signed by each party of representatives of each party.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by those officers, officials duly authorized to execute such agreements.

**State of Alabama
Department of Finance**

Bill Poole 9/13/22
Bill Poole
Director of Finance

Baptist Health Care Foundation

Tommy McKinnon
Tommy McKinnon
Executive Director

APPROVED:

Kay Ivey 9/13/2022
Kay Ivey
Governor of Alabama

CERTIFICATION AND ASSURANCE

I, Tommy McKinnon am the Executive Director
(Name of Signatory) *(Title)*

of Baptist Health Care Foundation
(State Agency, Local Government, or Non-Governmental Entity)

and I certify under penalty of perjury that:

1. I have the authority on behalf of the above listed entity (hereinafter "Entity") to request payment from the State of Alabama ("State") of funding from the Coronavirus State and Local Fiscal Recovery Fund.
2. I understand that this subaward is provided to the subrecipient through federal financial assistance to the State of Alabama in the amount of \$2,120,279,417 from the U.S. Treasury via Section 602(a)(1) of the Social Security Act (42 U.S.C. 301 et seq.), known as the American Rescue Plan Act, as created by Section 9901 of the ARPA, Pub. L. No. 117-2 (March 11, 2021) under Federal Award Identification Number SLFRP2635 Coronavirus State and Local Fiscal Recovery Fund for the period March 3, 2021 to December 31, 2024, CFDA number 21.027. This subaward is provided in accordance with the requirements set forth in the ARPA and other applicable federal and state law and policy, and the subrecipient affirms that all information it has provided relating to this subaward is true and accurate. This subaward does not include research and development. The parties acknowledge and understand that each subrecipient of FRF funds will be evaluated in accordance with Code of Federal Regulations 200-331(b) for risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward. Further, each subrecipients' activities will be monitored as necessary to ensure that the subaward is used for authorized purposes, in compliance with law, and that subaward performance goals are achieved. Other monitoring tools may be implemented depending on the level of risk posed by the subrecipient.
3. I understand that the State will rely on this certification as a material representation in making an award to the Entity.
4. The entity's proposed uses of the funds provided will be used only to cover those costs that are used —
 - a. To respond to the COVID-19 public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits; or for aid to impacted industries;
 - b. To respond to workers performing essential work during the COVID-19 public health emergency, by providing premium pay to eligible workers who are performing essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
 - c. For the provision of government services to the extent of the reduction in revenue of **the State** due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency (**Note:** Local recovery funds may not be used to replace local revenue); and
 - d. To make necessary investments in water, sewer, or broadband infrastructure.
5. The recipient agrees to maintain records concerning the funds provided in this award. Such records must be available for review or audit by appropriate officials of a federal and pass-through agency.
6. Notwithstanding any other provision of this Agreement, the Parties acknowledge and agree that the entity is a "Subrecipient" as that term is defined in Code of Federal Regulations, Title 2, § 200.1. As such, the entity is responsible for complying with all federal requirements for Subrecipients, including the Single Audit Act and Code of Federal Regulations, Title 2, Part 200, subpart F regarding audit requirements. Code of Federal Regulations, Title 2, § 200.332(f) requires recipients to verify with each subrecipient that is expected to expend \$750,000 or more in Federal awards during a fiscal year have a single or program-specific audit conducted for that year in accordance with the provisions of Code of Federal Regulations, Title 2, § 200.501. The parties acknowledge that the recipient has provided notice to subrecipient of the audit requirements applicable to the award made by this Agreement and the subrecipient agrees to comply therewith.
7. Any subrecipient, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.
8. 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 SLFRP2635 awarded to the State of Alabama by the U.S. Department of the Treasury."

Signature: 

Date: September 7, 2022

Printed Name: Tommy McKinnon

Title: Executive Director