

**AGREEMENT FOR DISBURSEMENT AND USE OF
KENDALL COUNTY’S AMERICAN RESCUE PLAN ACT FUNDS**

THIS AGREEMENT (“Agreement”) is made and entered into on this 15th day of February, 2022 by and between the County of Kendall, Illinois, a unit of local government (“County”) and Altitude Oswego LLC (“Grantee”). For purposes of this Agreement, the County and Grantee shall hereinafter collectively be referred to as “the Parties”.

RECITALS

WHEREAS, the United States Department of Treasury (“Treasury”) launched the Coronavirus State and Local Fiscal Recovery Fund (“Recovery Fund”), which was established by the American Rescue Plan Act of 2021 (“ARPA”), to provide \$350 billion in emergency funding for eligible state, local, territorial, and Tribal governments; and

WHEREAS, the Treasury determined the County is an eligible local government that will be receiving approximately twenty-five million dollars (\$25,000,000) in Recovery Funds from the United States Government in two tranches, with 50% provided beginning in May 2021 and the balance delivered approximately 12 months later; and

WHEREAS, the Treasury issued guidelines identifying the authorized use of Recovery Funds allocated to local governments under the ARPA (hereinafter referred to as the “Interim Final Rule”) and issued Frequently Asked Questions (“FAQs”) clarifying the Interim Final Rule; and

WHEREAS, pursuant to the Interim Final Rule, the County can use its allocated Recovery Funds for any one or more of the following authorized uses: (1) to respond to the public health emergency created by the COVID-19 pandemic (“pandemic”) or the pandemic’s negative economic impacts; (2) to provide premium pay to eligible workers performing essential work during the public health emergency; (3) to provide government services to the extent of the reduction in revenue due to the public health emergency; and (4) to make necessary investments in water, sewer, or broadband infrastructure; and

WHEREAS, within the eligible use categories outlined above, the Interim Final Rule provides the County with the flexibility to determine how best to use payments from the Recovery Funds to meet the needs of the County’s communities and population; and

WHEREAS, the Interim Final Rule permits the County to use its Recovery Funds to provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, and/or to mitigate financial hardship resulting from the pandemic; and

WHEREAS, the County finds that the pandemic has had a negative economic impact on Grantee and Grantee's use of a portion of the County's Recovery Funds would assist Grantee in adopting safer operating procedures, weathering periods of closures, and/or mitigating financial hardship resulting from the pandemic; and

WHEREAS, the County, as the jurisdiction responsible for disbursement of its Recovery Funds, is authorizing the disbursement of a portion of the County's Recovery Funds to Grantee (pursuant to the terms and conditions set forth in this Agreement) for the following specific purpose(s) to respond to the negative impact faced by Grantee as a result of the pandemic:

	Requested Funds	Explain Use of Funds
Payroll	0	N/A
Benefits	0	N/A
Mortgage/Rent	25000	Pay Rent for location 1600 Douglas Road
Utilities	0	N/A
Social Distancing	0	N/A
Enhanced Cleaning Efforts	0	N/A
Barriers or Partitions	0	N/A
COVID-19 Vaccination	0	N/A
COVID-19 Testing	0	N/A
Physical Plant Changes	0	N/A
Contact Tracing Programs	0	N/A
Technical Assistance	0	N/A
Counseling	0	N/A
Other	0	N/A
Total	25000.0	

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

1. Recitals

The recitals set forth above are incorporated in this Agreement by reference and made a part of this Agreement.

2. County’s Obligations

In consideration for Grantee’s execution of this Agreement, the County agrees to the following:

- a. Pursuant to the terms and conditions set forth in this Agreement, the County agrees to disburse a portion of its Recovery Funds to Grantee in the amount of Twenty-Five Thousand Dollars and Zero Cents (\$25,000) to be used by Grantee for the following purpose(s):

	Requested Funds	Explain Use of Funds
Payroll	0	N/A
Benefits	0	N/A
Mortgage/Rent	25000	Pay Rent for location 1600 Douglas Road
Utilities	0	N/A
Social Distancing	0	N/A
Enhanced Cleaning Efforts	0	N/A
Barriers or Partitions	0	N/A
COVID-19 Vaccination	0	N/A
COVID-19 Testing	0	N/A
Physical Plant Changes	0	N/A
Contact Tracing Programs	0	N/A
Technical Assistance	0	N/A
Counseling	0	N/A
Other	0	N/A
Total	25000.0	

Said amounts actually disbursed to Grantee shall hereinafter be referred to as “Grant funds.”

- b. The Grant funds set forth in Paragraph 2(a) shall be disbursed by the County to Grantee in one lump sum amount via check payable to “Altitude Oswego LLC” as soon as possible but no later than August 23rd, 2022.

3. Grantee’s Obligations

- a. Grantee understands and agrees it shall use the Grant funds only for the following limited purpose(s):

	Requested Funds	Explain Use of Funds
Payroll	0	N/A
Benefits	0	N/A
Mortgage/Rent	25000	Pay Rent for location 1600 Douglas Road
Utilities	0	N/A
Social Distancing	0	N/A
Enhanced Cleaning Efforts	0	N/A
Barriers or Partitions	0	N/A
COVID-19 Vaccination	0	N/A
COVID-19 Testing	0	N/A
Physical Plant Changes	0	N/A
Contact Tracing Programs	0	N/A
Technical Assistance	0	N/A
Counseling	0	N/A
Other	0	N/A
Total	25000.0	

- b. Grantee must spend all Grant funds within the following time period: February 15th, 2022 through August 23rd, 2022 (the “allowable spending period”). If Grantee has not spent all of the Grant funds by the end of the allowable spending period, Grantee must return all remaining Grant funds to the County within thirty (30) calendar days after Grantee’s allowable spending period ends.

- c. If Grantee uses the Grant funds for any purpose other than those set forth in Paragraph 3(a) above (hereinafter referred to as an “Improper Purpose”), Grantee shall immediately reimburse the County the full amount of Grant funds received from the County.
- d. By signing this Agreement, Grantee affirms that Grantee may not use its Grant funds as a non-federal match for other federal programs whose statute or regulations bar the use of federal funds to meet matching requirements. If Grantee uses its Grant funds for such purpose, this shall also be deemed an Improper Purpose, and Grantee shall immediately reimburse the County the full amount of Grant funds received from the County.
- e. By signing this Agreement, Grantee affirms all information submitted in its grant application is correct.
- f. By signing this Agreement, Grantee affirms that, at least since 2019, it has continuously possessed any required licenses for its type of business and been legally authorized to conduct business in Illinois and in Kendall County. In the event Grantee loses its authority to conduct its business in Illinois or Kendall County or otherwise loses its good standing, it shall immediately notify the County, and the County, in its sole discretion, may demand immediate repayment of all Grant funds disbursed to Grantee.
- g. Grantee agrees that its business will continue to operate within Kendall County for the duration of the allowable spending period. If Grantee’s business ceases to operate within Kendall County prior to the end of the allowable spending period, it shall immediately notify the County, and the County, in its sole discretion, may demand immediate repayment of all Grant funds disbursed to Grantee.
- h. Grantee agrees it shall not use its Grant funds for an expense for which it has already received, or will receive during the allowable spending period, reimbursement or payment from another federal, state, local, or private program designed to provide relief from the COVID-19 pandemic.
- i. Grantee agrees to comply with ARPA, the Interim Final Rule, and all interpretive guidance issued by the Treasury regarding Recovery Funds. Grantee also agrees to

comply with all applicable requirements set forth in 2 C.F.R. 200 *et seq.* and all other applicable federal and state statutes, regulations, and executive orders.

- j. Grantee shall maintain all original records relating to its use of the Grant funds for a period of at least ten (10) years after the Grant funds are spent or the period of time required by other state or federal law, whichever is longer.
- k. As a recipient of some of the County's Recovery Funds, Grantee understands and agrees that it must take any and all steps necessary to assist the County with the County's reporting requirements on the use of Grantee's Grant funds. Such steps will include, but are not limited to the following:
 - i. Ninety (90) calendar days after receiving the Grant funds, Grantee shall file a written report with the County that includes the following information: (a) the amount of Grant funds spent by Grantee during that three month period; (b) sufficient detail describing how the Grant funds were used by Grantee during that three month period; and (c) supporting documentation evidencing how the Grant funds were used by Grantee. Grantee agrees to provide any additional information and supporting documentation requested by the County in this report, as the County sees fit.
 - ii. Within five (5) calendar days after the allowable spending period ends, Grantee shall file a final written report with the County that includes the following information: (a) the amount of Grant funds spent by Grantee in the time since Grantee's previous report; (b) sufficient detail describing how the Grant funds were used by Grantee since the time period covered by Grantee's previous report; (c) supporting documentation evidencing how the Grant funds were used since the time period covered by Grantee's previous report; and (d) the amount, if any, of unused Grant funds being returned to the County at the conclusion of the allowable spending period. Grantee agrees to provide any additional information and supporting documentation requested by the County in this report as the County sees fit.
 - iii. At any other time, the County, its auditor, or legal counsel may request Grantee provide additional information and records relating to Grantee's use of the Grant funds. Grantee agrees to comply with such a request within

ten (10) business days of receiving such a request and to otherwise work collaboratively with the County to ensure compliance with ARPA.

- l. Grantee agrees to (a) fully comply with all applicable requirements of the Illinois Prevailing Wage Act; (b) notify all contractors and subcontractors that the construction of any public work using Grant funds shall be subject to the Illinois Prevailing Wage Act; and (c) include all notices required by statute and the Illinois Department of Labor in any contracts using Grant funds. In the event Grantee fails to comply with the notice requirements set forth in the Prevailing Wage Act, Grantee shall be solely responsible for any and all penalties, fines, and liabilities incurred for Grantee's, contractor's, and/or subcontractor's violation of the Prevailing Wage Act.
- m. If Grantee uses Grant funds to pay a contractor or subcontractor to perform work for Grantee, Grantee must ensure that such contracts include provisions incorporating all of the following:
 - i. The contractor/subcontractor agrees to comply with all applicable provisions of ARPA, the Interim Final Rule, 2 C.F.R. 200 *et seq.* and all other applicable federal and state statutes, regulations, interpretive guidance, and executive orders.
 - ii. The Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 *et seq.* and the Illinois Drug Free Workplace Act, 30 ILCS 580/1 *et seq.*
 - iii. The Illinois Human Rights Act, Title VI of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations.
 - iv. The Davis Bacon Act, 40 U.S.C. 3141 *et seq.* as necessary.
 - v. Grantee shall ensure that Grantee and each contractor and/or subcontractor performing work using Grant funds shall obtain and continue in force during the performance of such work, all insurance necessary and appropriate and that each contractor and/or subcontractor contracted with to perform work shall name the County as an Additional Insured on a Primary and Non-Contributory basis with respect to all liability coverage, as well as a waiver

of subrogation with respect to the general liability and workers' compensation in favor of the County. Further, Grantee shall require each contractor and/or subcontractor to provide indemnification and hold harmless guarantees to the County during the work.

- n. Grantee agrees that the maintenance of any work constructed in whole or in part with Grant funds will be the responsibility of Grantee, and Grantee alone. Further, Grantee shall be responsible for any future repair or replacement deemed necessary for said work. Nothing in this Agreement shall be construed as to create a duty or responsibility on behalf of County to finance, maintain, repair, replace, or otherwise control the resulting work.
- o. Grantee certifies that Grantee, its parent companies, subsidiaries, and affiliates are not barred from entering into this Agreement as a result of a violation of either 720 ILCS 5/33E-3 or 5/33E-4 (bid rigging or bid rotating) or as a result of a violation of 820 ILCS 130/1 et seq. (the Illinois Prevailing Wage Act). Grantee further certifies by signing this Agreement that Grantee, its parent companies, subsidiaries, and affiliates have not been convicted of, or are not barred for attempting to rig bids, price-fixing or attempting to fix prices as defined in the Sherman Anti-Trust Act and Clayton Act. 15 U.S.C. § 1 et seq.; and has not been convicted of or barred for bribery or attempting to bribe an officer or employee of a unit of state or local government or school district in the State of Illinois in that officer's or employee's official capacity. Nor has Grantee made an admission of guilt of such conduct that is a matter of record, nor has any official, officer, agent, or employee of the company been so convicted nor made such an admission.
- p. Grantee, its officers, employees, and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations.

4. Assignment

This Agreement and the rights of the Parties hereunder may not be assigned (except by operation of law), and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the Parties and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of such agreements.

5. Non-appropriation

The sole source of the Grant funds shall be from the County's received Recovery Funds. The County shall not be obligated to fund the Grant from any other source. If the County does not receive sufficient Recovery Funds to satisfy all or part of the County's obligations under this Agreement, the County's obligation to provide the Grant funds to Grantee shall be suspended unless and until such Recovery Funds are received by the County. Also, Grantee understands and agrees the County's disbursement of Grant funds to Grantee, as set forth in this Agreement, is contingent on the Kendall County Board's appropriation and disbursement of those funds. Grantee understands and agrees that the sole and exclusive decision as to whether or not to disburse Recovery Funds to Grantee lies within the discretion of the Kendall County Board.

6. Remedies

- a. The County, by disbursing Grant funds to Grantee, does not guarantee to Grantee that Grantee's intended use of the Grant funds complies with the requirements of ARPA. By signing this Agreement, Grantee affirms that its use of the Grant funds qualifies for funding under ARPA. The County reserves the right to demand immediate repayment from Grantee of any Grant funds the County determines, in its sole discretion, were used for a purpose that does not meet the criteria of ARPA, the Interim Final Rule, and/or any other Treasury guidelines associated with disbursement of funds under ARPA.
- b. If, following the disbursement of Grant funds to the Grantee, the County determines, in its sole discretion, the Grantee submitted any false, inaccurate, or misleading information in its grant application, the County may demand immediate repayment from Grantee of all Grant funds.
- c. If Grantee's records are needed to justify an expense to the Treasury or any other office, official, or department which is responsible for auditing disbursements of

ARPA funds, failure by Grantee to promptly provide these records, for any reason including the prior destruction of these records, shall constitute a breach of this Agreement. The sole and exclusive remedy for such a breach is that Grantee shall be responsible for repayment of any funds the Treasury or other appropriate office, official, or department finds were improperly used, unsupported, or unverified. Additionally, Grantee agrees to indemnify the County and make the County whole for any penalty assessed against the County based upon Grantee's failure to retain or provide records.

- d. Any other breach of this Agreement by Grantee may, at the sole discretion of the County, result in immediate termination of the Agreement and/or a demand for immediate repayment of all Grant funds. Grantee must return all Grant funds to the County within thirty (30) calendar days after the County issues a demand for immediate repayment pursuant to this paragraph.

7. Indemnity

The parties agree that, where the County relied upon the certification of Grantee that such expenses for which Grantee sought Recovery Funds met the minimum requirements of ARPA, and where the Treasury, or any other person, official, or department which is charged with the auditing and review of expenditures of Recovery Funds determines that the use of such funds was not permitted under ARPA, Grantee agrees to indemnify, reimburse and make whole the County for any funds which the United States Government or its agencies seek to recoup or collect, either by litigation, or by withholding other federal funds owed to the County.

Grantee further agrees to indemnify, reimburse, and make whole the County for any penalties associated with the United States government seeking to recoup the expended Grant funds including interest and/or any other penalty provided by law.

Grantee agrees to hold the County harmless for any evaluation or advice which the County provided to Grantee as to whether Grantee's use of Grant funds is a permissible use under ARPA.

In addition to all of the above, Grantee shall indemnify, hold harmless and defend with counsel of County's own choosing, County, its past, present and future elected officials, department heads, employees, insurers, and agents (hereinafter collectively referred to as "Releasees") from and against all liability, claims, suits, causes of action, demands, proceedings, set-offs, liens, attachments, debts, expenses, judgments, or other liabilities including costs,

reasonable fees and expense of defense, arising from any loss, damage, injury, death, or loss or damage to property, of whatsoever kind or nature as well as for any breach of any covenant in the Agreement and any breach by Grantee of any representations or warranties made within the Agreement or Grantee's grant application (collectively, the "Claims"), to the extent such Claims result from any act or omission, neglect, willful acts, errors, or misconduct of Grantee in its performance under this Agreement or its use of Grant funds.

Pursuant to 55 ILCS 5/3-9005, no attorney may be assigned to represent the Releasees pursuant to this Section of the Agreement unless the attorney has been approved in writing by the Kendall County State's Attorney. Releasees' participation in its defense shall not remove Grantee's duty to indemnify, defend, and hold Releasees harmless, as set forth above. Releasees do not waive their defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) by reason of this indemnification provision. All indemnification obligations shall survive the termination of this Agreement.

8. Notice

Any notice required or permitted in this Agreement shall be given by either (a) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and certified with the return receipt requested, (b) delivering the same in person, or (c) via e-mail with electronic confirmation of receipt.

If to the County: Kendall County Administrator
111 W. Fox Street
Yorkville, Illinois 60560

With copy to:
Kendall County State's Attorney
807 John Street
Yorkville, Illinois 60560

If to Grantee: Euan White
1600 Douglas Road
Oswego, IL 60560

or such address or counsel as any party hereto shall specify in writing pursuant to this Section from time to time. Delivery of notice shall be deemed to have occurred upon the date of receipt of the notice.

9. Venue, Legal Action, and Severability

This Agreement shall be interpreted and enforced under the laws of the State of Illinois. Any legal proceeding related to enforcement of this Agreement shall be brought in the Circuit Court of Kendall County, Illinois. If the County is required to take legal action to enforce performance of any of the terms, provisions, covenants and conditions of this Agreement, and by reason thereof, the County is required to use the services of an attorney, then the County shall be entitled to reasonable attorneys' fees, court costs, expenses and expert witness fees incurred by the County pertaining thereto and in enforcement of any remedy, including costs and fees relating to any appeal.

In case any provision of this Agreement shall be declared and/or found invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall, to the extent possible, be modified by the court in such manner as to be valid, legal and enforceable so as to most nearly retain the intent of the parties, and, if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

10. Execution of Agreement

This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and both of which shall constitute one and the same Agreement.

11. Entire Agreement

This Agreement represents the entire agreement between the Parties regarding this subject matter and there are no other promises or conditions in any other agreement whether oral or written. Except as expressly stated herein, this Agreement supersedes any other prior written or oral agreements between the parties regarding this subject matter and may not be further modified except in writing acknowledged by both parties.

12. Relationship of the Parties

Nothing contained in this Agreement, nor any act of the County or Grantee pursuant to this Agreement, shall be deemed or construed by any of the parties hereto or by third persons, to create

any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the County and Grantee. Grantee understands and agrees that Grantee is solely responsible for paying all wages, benefits and any other compensation due and owing to Grantee's officers, employees, and agents for the performance of any services as set forth in the Agreement.

13. Conflict of Interest

The County and the Grantee both affirm no Kendall County officer or elected official has a direct or indirect pecuniary interest in Grantee or this Agreement.

14. Waiver

The County and/or Grantee's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

15. Termination

This Agreement shall be in full force and effect upon signature by both parties and will terminate once Grantee has spent or returned all the Grant funds it has received from the County and filed its final report. However, Grantee's record-keeping obligation and its duties to defend and indemnify shall survive the term of this Agreement.


16. Authority

The County and Grantee each hereby warrant and represent that their respective signatures set forth below have been, and are on the date of this Agreement, duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement, using duplicate counterparts, on the dates listed below.

KENDALL COUNTY, ILLINOIS

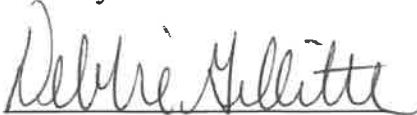
Altitude Oswego LLC



Scott Gryder
Kendall County Board Chair



NAME
JOB TITLE *CO-OWNER*

Attest: 

Debbie Gillette
Kendall County Clerk

Attest: 

Date: 2/15/22

Date: 3/11/22