

**AMENDMENT NUMBER ONE TO SUBRECIPIENT AGREEMENT
BETWEEN THE COUNTY OF ORANGE AND THE CITY OF HUNTINGTON
BEACH FOR ECONOMIC SUPPORT PROVIDED BY THE CITY**

This Amendment Number One (hereinafter “Amendment”) to the Subrecipient Agreement (the “Agreement”) between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County,” and the City of Huntington Beach, a municipal corporation, hereafter referred to as “Subrecipient,” for Economic Support provided by the Subrecipient is made and entered into on the date fully executed by the County and Subrecipient, which may be referred to individually as “Party” or collectively as “Parties”.

RECITALS

WHEREAS, the County and Subrecipient fully executed the Agreement as of December 28, 2020; and

WHEREAS, the Parties desire to amend the Agreement to revise the definition of “Small Businesses” that may receive grant funds from the Subrecipient to include certain non-profit organizations impacted by COVID-19.

NOW, THEREFORE, the Parties mutually agree as follows:

1. Paragraph 2, subparagraph (c), of the Agreement shall be amended as follows:

a. The term “Small Business,” as used in this Agreement, shall mean:

(1) an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located within the jurisdictional boundaries of Subrecipient, at least one officer of which is domiciled in Orange County, California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of fifteen million dollars (\$15,000,000) or less over the previous three years, or is a manufacturer with 100 or fewer employees; or

(2) a non-profit organization that is tax-exempt under IRC 501 (c)(3), 501(c)(6), or 501(c)(19), the principal office of which is located in the City of Huntington Beach, that incurred costs due to the impacts

associated with COVID-19, including but not limited to human service organizations (i.e. meeting basic needs, family support, mental health services, etc.), senior service organizations, youth outreach and engagement organizations, educational organizations, arts and culture organizations, and environmental and animal welfare organizations.

2. Except as expressly amended herein, all other terms and conditions of the Agreement shall remain unchanged, in full force and affect.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the day and year dated below.

CITY OF HUNTINGTON BEACH
A California Municipal Corporation

COUNTY OF ORANGE
A political subdivision of the State of California

By: DocuSigned by:
Oliver Chi
3BA73B74EE8C4E5...
Oliver Chi, City Manager

By: DocuSigned by:
Frank Kim
74308AB26B464EC...
Frank Kim, Chief Executive Officer

Date: 5/7/2021

Date: 5/7/2021

By: DocuSigned by:
Michael Gates
3835A90A21CF4AB...
Michael E. Gates
City Attorney

By: DocuSigned by:
Mark Servino
75C3A58FFA0F4E6...
Mark Servino
Supervising Deputy County Counsel

Date: 5/7/2021

Date: 5/5/2021

**SUBRECIPIENT AGREEMENT BETWEEN THE COUNTY OF ORANGE
AND THE CITY OF HUNTINGTON BEACH
FOR ECONOMIC SUPPORT PROVIDED BY THE CITY**

This Subrecipient Agreement (the “Agreement”) is made and entered into by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County,” and the City of Huntington Beach, a municipal corporation, hereafter referred to as “Subrecipient,” with the County and Subrecipient referred to as “Party,” or collectively as “Parties.”

WHEREAS, on February 26, 2020, the County Health Officer declared a local health emergency based on an imminent and proximate threat to public health from the introduction of a novel coronavirus (named “COVID-19”) in Orange County (the “COVID-19 Emergency”); and

WHEREAS, on March 2, 2020, the Board of Supervisors adopted Resolution No. 2020-11 ratifying the local health emergency declared by the County’s Health Officer; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS, the State, like the Nation, continues to record a surge in the level of community spread of COVID-19 resulting in a Statewide increase in the number of new hospital admissions from 777 on November 15, to 1,651 on December 2; and

WHEREAS the rise in cases, if it continues, risks overwhelming the ability of California hospitals to deliver healthcare to its residents suffering from COVID-19 and from other illnesses requiring hospital care; and

WHEREAS, on December 3, 2020, California health officials announced a Regional Stay at Home Order that will be triggered if Intensive Care Unit (ICU) capacity drops below 15 percent in a given region; and

WHEREAS, the Regional Stay at Home Order instructs Californians to stay at home as much as possible to limit mixing with other households that can lead to COVID-19 spread; and

WHEREAS, on December 10, 2020, the Southern California region was at 9% ICU capacity, and the Regional Stay at Home Order remained in effect in the County of Orange; and

WHEREAS the COVID-19 pandemic and the necessary physical distancing measures implemented have impacted many businesses, leading to business closures, loss of employee hours and wages, and layoffs; and

WHEREAS the Orange County Board of Supervisors has allocated \$10 million in General Funds equally between the five supervisorial districts for economic support initiatives for small businesses in response to COVID-19; and

WHEREAS, pursuant to the authority delegated by the Orange County Board of Supervisors, a total of \$2 million will be distributed to Orange County cities located in the Second District of the Orange County Board of Supervisors (the "Second District") on a per capita basis based on the 2010 population figures provided by the United States Census Bureau for the economic support of small businesses located within the jurisdictional boundaries of each city grant recipient; and

WHEREAS, in order to provide funds for the Subrecipient to pay expenditures it has or will incur providing economic support to small businesses in the Second District due to the COVID-19 public health emergency, the Parties have agreed that the County shall transfer the grant amount described herein to Subrecipient.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM OF AGREEMENT.** The term of this Agreement begins on the date when fully executed by the Parties, and terminates on July 31, 2021, or when all of the Parties' obligations under this Agreement are fully satisfied, whichever occurs earlier.

2. **USE OF GRANT AMOUNT.**

a. Subrecipient shall use the grant amount provided under this Agreement to pay for Eligible Expenses that: (1) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; and (2) were incurred during the period that begins on December 31, 2020 and ends on June 30, 2021.

b. The term “Eligible Expenses,” as used in this Agreement, shall mean expenses incurred and paid for by Subrecipient for the provision of economic support to Small Businesses located in the Second District in connection with the COVID-19 public health emergency, including expenditures related to the provision of grants to Small Businesses to reimburse the costs of business interruption caused by required closures and unemployment insurance costs related to the COVID-19 public health emergency if such costs will not otherwise be reimbursed by the federal government.

c. The term “Small Business,” as used in this Agreement, shall mean an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located within the jurisdictional boundaries of Subrecipient, at least one officer of which is domiciled in Orange County, California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of fifteen million dollars (\$15,000,000) or less over the previous three years, or is a manufacturer with 100 or fewer employees.

d. The following is a nonexclusive list of expenditures that shall not constitute Eligible Expenses payable from the grant amount:

- (1) Subrecipient administrative costs that exceed 3.5 percent of the grant amount set forth in Paragraph 3(a) of this Agreement.
- (2) Damages covered by insurance.
- (3) Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
- (4) Reimbursement to donors for donated items or services.
- (5) Workforce bonuses other than hazard pay or overtime.
- (6) Severance pay.
- (7) Legal settlements.

e. Subrecipient must utilize the grant amount in accordance with all Federal and State laws.

3. PAYMENT OF GRANT AMOUNT

a. The County shall pay Subrecipient a grant amount of **\$648,000** within 10 business days of the full execution of this Agreement. All of Subrecipient's expenditures of the grant amount must be for costs as described in Paragraph 2 of this Agreement. The grant amount represents the amount allocated to Subrecipient based on population pursuant to the authority delegated by the Board of Supervisors to the County Executive Officer on December 15, 2020.

b. It is understood that the County makes no commitment to fund this Agreement beyond the terms set forth herein.

c. If Subrecipient has not spent any portion of the grant amount it has received under this Agreement to cover Eligible Expenses by June 30, 2021, Subrecipient shall return to the County by July 31, 2021 the amount remaining unspent as of June 30, 2021.

4. **STATUTES AND REGULATIONS APPLICABLE TO GRANT.** Subrecipient must comply with all applicable requirements of State, Federal, and County of Orange laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this Agreement. Subrecipient must comply with applicable State and Federal laws and regulations pertaining to labor, wages, hours, and other conditions of employment. Subrecipient must comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement. These requirements include, but are not limited to:

a. Office of Management and Budget (OMB) Circulars. Subrecipient must comply with OMB Circulars, as applicable: OMB Circular A-21 (Cost Principles for Educational Institutions); OMB Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments); OMB Circular A-102 (Grants and Cooperative Agreements with State and Local Governments); Common Rule, Subpart C for public agencies or OMB Circular A-110 (Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations); OMB Circular A-122 (Cost Principles for Non-Profit Organizations); OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).

b. Political Activity Prohibited. None of the funds, materials, property, or services provided directly or indirectly under this Agreement may be used for any partisan political activity, or to further the election or defeat of any candidate for public office. Funds provided under this Agreement may not be used for any purpose designed to support or defeat any pending legislation or administrative regulation.

c. Tax Reporting. Subrecipient is responsible for any tax reporting requirements that arise from Subrecipient's distribution of economic support to Small Businesses, including the filing of any required tax forms with the IRS and the issuance of any required tax forms to recipients of economic support from the Subrecipient.

5. REPORTS.

a. Progress Report. On March 15, 2021, Subrecipient shall provide a report to the County that shall: (1) identify the Eligible Expenses paid from the grant amount; (2) identify the name and location of each Small Business receiving economic support funded by the grant amount and the amounts paid to each Small Business; (3) demonstrate how Subrecipient used the grant amount consistent with the use requirements of Paragraph 2; and (4) identify the balance of the grant amount that Subrecipient has not spent.

b. Final Report. Upon the earlier of Subrecipient's expenditure of the balance of the grant amount or July 15, 2021, Subrecipient shall provide a report to the County that shall: (1) identify the Eligible Expenses paid from the grant amount; (2) identify the name and location of each Small Business receiving economic support funded by the grant amount and the amounts paid to each Small Business; (3) demonstrate how Subrecipient used the grant amount consistent with the use requirements of Paragraph 2; and (3) identify the balance of the grant amount that Subrecipient has not spent, if any.

c. The Subrecipient shall provide a certification signed by its chief executive officer with each report required under this Paragraph 5 that the statements contained in the report are true and that the expenditures described in the report comply with the uses permitted under Paragraph 2.

d. Subrecipient shall maintain supporting documentation for the reports required by this Paragraph 5 consistent with the requirements of Paragraph 6.

6. **RECORDS MAINTENANCE.** Records, in their original form, must be maintained in accordance with requirements prescribed by the County with respect to all matters specified in this Agreement. Original forms are to be maintained on file for all documents specified in this Agreement. Such records must be retained for a period four (4) years after termination of this Agreement and after final disposition of all pending matters. "Pending matters" include, but are not limited to, an audit, litigation or other actions involving records. Records, in their original form pertaining to matters covered by this Agreement, must at all times be retained within the County of Orange unless authorization to remove them is granted in writing by the County.

7. **RECORDS INSPECTION.** At any time during normal business hours and as often as either the County or the Auditor General of the State of California may deem necessary, Subrecipient must make available for examination all of its records with respect to all matters covered by this Agreement. The County and the Auditor General of the State of California each have the authority to audit, examine and make excerpts or transcripts from records, including all Subrecipient's invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Subrecipient agrees to provide any reports requested by the County regarding performance of this Agreement. With respect to inspection of Subrecipient's records, the County may require that Subrecipient provide supporting documentation to substantiate Subrecipient's expenses with respect to the Subrecipient's use or expenditure of the grant amount.

8. **INDEPENDENT CONTRACTOR.** The Subrecipient shall be considered an independent contractor and neither the Subrecipient, its employees, nor anyone working under the Subrecipient shall be considered an agent or an employee of County. Neither the Subrecipient, its employees nor anyone working under the Subrecipient shall qualify for workers' compensation or other fringe benefits of any kind through County.

9. **PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS.** Subrecipient shall be responsible for obtaining any and all permits, licenses, and approvals required for performing any work under this Agreement. Subrecipient shall be responsible for observing and complying with any applicable Federal, State, or local laws, or rules or regulations affecting any such work. Subrecipient shall provide copies of permits and approvals to the County upon request.

10. **INDEMNITY.** The Subrecipient agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees and agents and those special districts and agencies which

County's Board of Supervisors acts as the governing Board harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the Subrecipient's receipt, distribution or expenditure of the grant amount under this Agreement. The provisions of this paragraph shall survive the termination of this Agreement.

11. NOTICES. Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Subrecipient:

Oliver Chi
City Manager
City of Huntington Beach
2000 Main Avenue
Huntington Beach, CA 92648

County:

Denis Bilodeau
County of Orange
County Executive Office
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701

12. DEFAULTS. Should either Party fail for any reason to comply with the contractual obligations of this Agreement within the time specified by this Agreement, the non-breaching Party reserves the right to terminate the Agreement, reserving all rights under State and Federal law.

13. **ATTORNEY FEES.** In any action or proceeding to enforce or interpret any provision of this Agreement, each Party shall bear its own attorney's fees, costs, and expenses.

14. **ENTIRE CONTRACT:** This Agreement contains the entire contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes, or revisions are valid or binding on the parties unless authorized by the Parties in writing.

15. **AMENDMENTS.** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes, or revisions are valid or binding on County unless authorized by County in writing.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year dated below.

CITY OF HUNTINGTON BEACH
A California Municipal Corporation

COUNTY OF ORANGE
A political subdivision of the State of California

By: DocuSigned by:
Oliver CW
3BA73B74EE8C4E5...
City Manager

By: DocuSigned by:
Frank Kim
44308AB26B464EC...
Chief Executive Officer

Date: 12/28/2020

Date: 12/28/2020

By: DocuSigned by:
Michael E. Gates
3835A90A21CF4AB...
City Attorney

By: DocuSigned by:
Mark Servino
45C3A58FFA0F4E6...
Supervising Deputy County Counsel

Date: 12/28/2020

Date: 12/24/2020