

**SUBRECIPIENT AGREEMENT BETWEEN THE COUNTY OF ORANGE  
AND THE CITY OF COSTA MESA FOR CORONAVIRUS RELIEF FUNDS  
FOR ECONOMIC SUPPORT PROVIDED BY THE CITY**

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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 Costa Mesa, 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, on March 13, 2020, the President of the United States issued a Proclamation on Declaring a National Emergency Concerning the COVID-19 Outbreak; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress and signed into law by the President of the United States on March 27th, 2020; and

WHEREAS, the CARES Act established the Coronavirus Relief Fund and the County received an allocation of funds from the Coronavirus Relief Fund under section 601(a) of the Social Security Act, as added by section 5001 of the CARES Act; and

WHEREAS, the CARES Act provides that payments from the Coronavirus Relief Fund may only be used to cover costs that (1) are necessary expenditures incurred due to the public health emergency with respect to the COVID–19; (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the

date of enactment of the CARES Act) for the State or local government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and

WHEREAS, the Department of Treasury has issued guidance that the County may transfer funds to a unit of government within its borders provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act; and

WHEREAS, the Department of Treasury has issued guidance that eligible expenses include costs associated with the provision of economic support in connection with the COVID-19 public health emergency, such as expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures; and

WHEREAS, the Orange County Board of Supervisors has authorized the distribution of \$15 million in funds it received from the Coronavirus Relief Fund to Orange County cities located in the Second District of the Orange County Board of Supervisors (the "Second District") based on the 2010 population figures provided by the United States Census Bureau for the economic support of small businesses located in Subrecipient in the Second District; and

WHEREAS, in order to provide funds for the Subrecipient to pay necessary 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 June 30, 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; (2)

were not accounted for in the budget most recently approved by Subrecipient as of March 27, 2020; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

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, the officers of which are 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) Damages covered by insurance.

(2) Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

(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, including but not limited to 42 U.S.C. § 801, subsection (d), and all applicable regulations and guidelines, including guidance issued by the Department of Treasury regarding costs that are payable from Coronavirus Relief Funds, which includes but is not limited to Guidance for State, Territorial, Local, and Tribal Governments dated April 22, 2020 (Exhibit A) and Coronavirus Relief Fund Frequently Asked Questions Updated as of May 4, 2020 (Exhibit B).

3. PAYMENT OF GRANT AMOUNT

a. The County shall pay Subrecipient a grant amount of \$2,746,469.39 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 May 26, 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 December 30, 2020, Subrecipient shall return to the County by February 1, 2021 the amount remaining unspent as of December 30, 2020.

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. Single Audit Act. Since Federal funds are used in the performance of this Agreement, Subrecipient must, as applicable, adhere to the rules and regulations of the Single Audit Act (31 USC Sec. 7501 et seq.), OMB Circular A-133 and any administrative regulation or field memoranda implementing the Act.

c. 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.

5. **COMPLIANCE WITH GRANT REQUIREMENTS**. To obtain the grant funds, the Department of the Treasury required an authorized representative of the County to agree to certain promises regarding the way the grant funds would be spent. This certification is attached hereto as Exhibit C. By signing this certification, the County made material representations to the Department of Treasury in order to receive payments from the Department of Treasury pursuant to section 601(b) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, div. A, Title V (Mar. 27, 2020). In accordance with Paragraph 11, Subrecipient agrees to indemnify, defend, and hold harmless the County of Orange for any sums the State or Federal government contends or determines Subrecipient used in violation of the certification. Subrecipient shall immediately return to the County any funds the County or any responsible State or Federal agency, including the Department of Treasury, determines the Subrecipient has used in a manner that is inconsistent with Paragraph 2 of this Agreement. The provisions of this paragraph shall survive termination of this Agreement.

6. REPORTS.

a. Progress Report. On October 1, 2020, 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 January 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 6 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 6 consistent with the requirements of Paragraph 7.

7. 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.

8. **RECORDS INSPECTION.** At any time during normal business hours and as often as either the County, Inspector General acting pursuant to the Inspector General Act of 1978, 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, Inspector General, 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.

9. **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.

10. **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.

11. **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 of the grant amount under this Agreement, including any claims that the grant amount paid by the County under this Agreement were not used consistent with the restrictions on the use of Coronavirus Relief Funds (42 U.S.C. § 801) and the regulations and guidance issued by the Department of Treasury regarding the use of such funds. The provisions of this paragraph shall survive the termination of this Agreement.

12. 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:

County:

Arie Dana, Chief of Staff  
Office of Supervisor Michelle Steel  
Orange County Board of Supervisors  
10 Civic Center Plaza  
Santa Ana, CA 92701

13. 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.

14. 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.

15. 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.

16. 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 COSTA MESA  
A California Municipal Corporation

COUNTY OF ORANGE  
A political subdivision of the State of California

By: \_\_\_\_\_  
\_\_\_\_\_,  
[Title]

By: \_\_\_\_\_  
Michelle Steel, Chairwoman

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors  
County of Orange, California  
APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Deputy County Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_