
**CITY OF CHULA VISTA
AMERICAN RESCUE PLAN ACT OF 2021
DIRECT GRANTS FOR SMALL BUSINESS AND NONPROFIT RELIEF FUND
AGREEMENT**

This Direct Grants for Small Businesses and Nonprofit Relief Fund Agreement (“Agreement”) is entered into between the City of Chula Vista, a California municipal corporation (“City”), and the The San Diego Foundation, a California nonprofit corporation (“Program Administrator” or “Contractor”) (collectively, the “Parties”), effective as of July 12, 2022 (“Effective Date”).

RECITALS

WHEREAS, health and governmental authorities around the globe are responding to a large-scale pandemic due to the outbreak of a respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19; and

WHEREAS, states and local governments across the United States, including the State of California, issued stay-at-home orders to prevent the spread of the highly contagious and deadly COVID-19, resulting in massive and largely unprecedented disruptions in the economy, including record levels of unemployment and loss of compensable work hours or wages by numerous Chula Vista residents, and sharply limiting the ability of businesses to provide, and customers to purchase, goods and services; and

WHEREAS, it is in the public interest to provide economic support that addresses the continued and serious negative impacts of the COVID-19 emergency on the local economy, including promotion of a stable business market and support for nonprofit entities and their employees once the COVID-19 emergency is abated; and

WHEREAS, the City recognizes that Chula Vista County Data on positive COVID-19 cases, unemployment statistics, and other economic-based metrics demonstrate that there are economically disadvantaged and struggling small businesses and charitable nonprofits that have been disproportionately impacted by the pandemic; and

WHEREAS, it is in the public interest to identify small businesses, charitable entities, and nonprofit organizations which are most vulnerable to the impacts of COVID-19, including nonprofits who have lost donor support (collectively, “at-risk nonprofits”), to provide at-risk nonprofits with economic support to address the continued and serious negative impacts of the COVID-19 emergency on the local economy, and to promote a stable charitable environment benefitting the community to which community members and their employees can return once the COVID-19 emergency is abated; and

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WHEREAS, the U.S. Congress provided for various forms of relief for the COVID-19 pandemic through enacting the American Rescue Plan Act of 2021, Public Law No: 117-2 (03/11/2021) (“ARP”), including an allocation of Coronavirus State and Local Fiscal Recovery Funds to Metropolitan Cities; and

WHEREAS, the City has received an allocation from the ARP funds; and

WHEREAS, the ARP requires that the City only use the ARP funds to cover costs incurred by the City by December 31, 2024 and for one of the following allowable uses:

- (a) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- (b) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the metropolitan city, nonentitlement unit of local government, or county that are performing such 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 such metropolitan city, nonentitlement unit of local government, or county due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, nonentitlement unit of local government, or county prior to the emergency; or
- (d) to make necessary investments in water, sewer, or broadband infrastructure.

WHEREAS, the City finds that expenditures in support of providing financial assistance to small businesses and nonprofits are vital to address the public health emergency with respect to COVID-19 and that such expenditures are eligible expenses under the ARP Act; and

WHEREAS, Program Administrator is a Section 501(c)(3) tax-exempt public charity that is organized and operated under the mission to inspire enduring philanthropy and enable community solutions to improve the quality of life in our region and a vision for just, equitable, and resilient communities under strategic priorities that include advancing racial and social justice and fostering equity of opportunity; and

WHEREAS, on August 24, 2021, the Chula Vista City Council allocated funding for the purposes set forth in this Agreement, identifying \$2,600,000 of ARP Funds to provide support and resources

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in the form of direct grants to small businesses and nonprofits through an agreement with Program Administrator (\$2.1M to small businesses and \$500,000 to nonprofits); and

WHEREAS, the Program Administrator has agreed to contribute a separate \$1,000,000 to be included in the program for nonprofit awards using the same methodology and criteria for awards but requiring separate accounting; and

WHEREAS, the City wishes, and finds it to be in the public's best interest, to utilize the special services of The San Diego Foundation, as Program Administrator, and to work with the Small Business Development Center (SBDC) as a technical partner and to manage the disbursement of the ARP Funds and Supplemental Funds consistent with the purposes and requirements ARP and this Agreement; and

WHEREAS, Program Administrator and the SBDC have an existing administrative framework; specialized financial and accounting experience; and, demonstrated ability to expeditiously provide the City with the specialized services the City does not possess, and has issued grants on behalf of many entities, people and organizations since their respective inceptions.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Program Administrator agree as follows:

TERMS AND CONDITIONS

1. Amount of ARP Funds. The City shall pay an amount of two million six hundred thousand dollars (\$2,600,000) in ARP Funds to the Program Administrator ("ARP Funds"). Program Administrator, through the SBDC, shall direct and manage funds for the purpose of implementing this Agreement, and Program Administrator shall be wholly responsible for ensuring the ARP Funds are used only for allowable expenditures under this Agreement as such requirements are set forth on **Exhibit A**, Statement of Work, and applicable law.
2. Supplemental Grant Funds. Program Administrator shall contribute one million dollars (\$1,000,000) to the program to provide grants to nonprofits using the same methodology and criteria for awards but requiring separate accounting as required by federal law. Program Administrator to select grantees and awards to range from \$5,000 to \$100,000. ("Supplemental Funds").
3. Purpose of Funds. Program Administrator shall use and expend the ARP Funds and Supplemental Funds solely for the purposes set forth in, and in accordance with this Agreement including **Exhibit A**, Statement of Work, which is attached hereto and made a part hereof. Five percent (5%) of the total amount of the ARP Funds and Supplemental Funds (\$180,000) will be paid to Program Administrator as fees to administer the program and up to \$70,000 to reimburse third party costs, including but not limited to audit/legal fees, from the City's General Fund. The entirety of the \$3.6 million shall be paid out as grant

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funds. The 5% administration fee shall be funded by the City's ARP funds, designated as Revenue Recovery. The reimbursable costs of up to \$70,000 shall be funded by the City's non-federal general-purpose funds.

4. **Deadline for Use of Funds.** Program Administrator shall have until March 31, 2023, to use and expend funds under this Agreement ("Final Expenditure Date"). All ARP Funds not expended in accordance with **Exhibit A** by March 31, 2023, shall be returned to City no later than May 1, 2023, unless the Final Expenditure Date is extended in accordance with this Paragraph 4.
 - (a) **Extension.** Program Administrator may request up to two (2) extensions of the Final Expenditure Date. Each extension period may be for up to three (3) months and shall be governed by the terms of this Agreement. The request for an extension must be provided in writing to the City no later than thirty (30) calendar days prior to the current Final Expenditure Date and shall include a summary of the program status, remaining ARP Funds and Supplemental Fund balance, awards pending, unreviewed applications pending, and anticipated timeline to expend remaining ARP Funds and Supplemental Funds. City may request additional information at the time of the request. Approval of any extension, including length of extension period, shall be at the sole and absolute discretion of the Mayor or her designee.
 - (b) **Return of ARP and Supplemental Funds to City.** Program Administrator shall return all funds not expended in accordance with Exhibit A to the City (i) within thirty (30) calendar days of the Final Expenditure Date, or (ii) no later than May 1, 2023, or (iii) as provided in Section 10 (Termination of Agreement), whichever occurs earlier.
5. **Documentation of Expenditures; Disallowance.** Program Administrator shall maintain all documentation, and shall timely prepare and deliver reports to the City in accordance with **Exhibit A**, Statement of Work and **Exhibit B**, Federal Requirements. If City determines that any amount of Program Administrator's expenditures under this Agreement lacks the required documentation in any material respect within five (5) business days of making a request for such required documentation or did not comply with the requirements of funding as set forth in **Exhibit A**, City shall provide notice of such determination to Program Administrator. Program Administrator shall have thirty (30) business days from the date of such notice to appeal the determination to the City, whose decision on the appeal shall be final. Program Administrator shall refund such ARP and Supplemental Fund amount to the City within forty-five (45) days of the initial notice if no appeal is filed, or, if an appeal is filed within fifteen (15) days of a final determination by the City on appeal that such expenditures lack the required documentation in any material respect or are otherwise ineligible for ARP funding.
6. **Compliance with Laws.** Program Administrator shall comply with all applicable federal requirements set forth in **Exhibit B**, Federal Requirements, and all City requirements set forth in **Exhibit C**, City Requirements, attached hereto.

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7. Agreement Administration. The individuals listed below are authorized contact persons with respect to the specified matters on behalf of the City and Program Administrator

respectively. All communications between Program Administrator and the City shall be sent to the individuals via the communications means listed as follows:

City of Chula Vista Eric Crockett Deputy City Manager 276 Fourth Avenue Chula Vista, CA 91910 Phone: (619) 476-5341 Email: ECrockett@chulavistaca.gov	The San Diego Foundation Mark Stuart President and CEO 2508 Historic Decatur Rd., Suite 200 Chula Vista, CA 92106 Phone (619) 235-2300 Email: Marks@sdfoundation.org
<i>Secondary Contact:</i> City Attorney 276 Fourth Avenue Chula Vista, CA 91910	<i>Secondary Contact:</i> James Howell Vice President, CFO 2508 Historic Decatur Rd., Suite 200 Chula Vista, CA 92106 Phone (619) 235-2300 James@sdfoundation.org

8. Notices. Unless otherwise specified, in all cases where notice is required in this Agreement, Notice shall be in writing and transmitted to the authorized contact persons of City or Program Administrator, as applicable, as designated in Section 7 of this Agreement, by one or more of the following methods: (a) electronic mail; (b) messenger for immediate personal delivery; (c) a nationally recognized one Business Day delivery service (i.e., Federal Express, United Parcel Service, etc.); or (d) registered or certified mail, postage prepaid, return receipt requested, through the United States Postal Service. Notice may be sent in the same manner to such other addresses as either Party may from time to time designate by notice, in accordance with this section 8. Notice shall be deemed received by the addressee on the date sent by electronic mail, if sent before 3:00 p.m. Pacific Time, the date the notice is delivered by personal delivery, on the date the notice is delivered (or the date of the second attempted delivery, as set forth in a written statement of the delivery service) by a nationally recognized overnight delivery service, or three (3) calendar days after the notice is deposited with the United States Postal Service as provided in this section 8. Rejection, other refusal to accept or the inability to deliver a notice because of a

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changed address of which no notice was given, shall be deemed receipt of the notice. Any party to this Agreement may change its notice address by notice delivered in accordance with this section 8.

9. Audit and Inspection of Records. At any time during normal business hours and upon reasonable notice, Program Administrator shall make available to the City for examination all of their respective records with respect to all ARP Fund and Supplemental Fund matters covered by this Agreement and will permit the City to audit, examine and make or receive copies of such ARP Funds and Supplemental Fund records, and make or receive copies of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by this Agreement as to the ARP and Supplemental Funds. Unless otherwise specified by the City, said records shall be made available for examination within Chula Vista County. Program Administrator shall maintain such records in an accessible location and condition for a period of not less than five (5) years following Program Administrator's after all funds have been expended or returned to Treasury, or submission of the final report, whichever is later. The State of California and any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon City by this Agreement, and Program Administrator shall have all the same rights conferred upon City by this Agreement.

10. Termination of Agreement.

(a) Termination without Cause.

The City may, by written notice to the Program Administrator stating the extent and effective date, terminate this Agreement without cause, at any time; provided, however, that City shall endeavor to negotiate with Program Administrator in good faith to amend this Agreement as reasonably needed to address the City's underlying concerns, rather than proceeding with termination. Within ten (10) business days of receipt of notice of such termination, the Program Administrator shall return to City any unexpended funds paid to it under this Agreement and shall make any final reporting within fifteen (15) business days after receipt of notice of such termination.

(b) Termination for Default.

If Program Administrator fails to perform its obligations under this Agreement, the City may send Program Administrator a written notice of default that specifies the nature of the default. Program Administrator shall cure the default within thirty (30) business days following receipt of the notice of default, and earlier if reasonably possible under the circumstances, or within such additional time period to which City may agree, which agreement shall not unreasonably be withheld. If Program Administrator fails to cure the default within that time, the City may terminate this Agreement by giving Program Administrator written notice of termination, effective immediately upon receipt. Following receipt of such notice of termination,

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Program Administrator shall promptly, and not later than ten (10) business days, provide City's administrator with documentation of fund expenditures setting forth its total actual expenditures for the intended purposes as of the effective date of termination. Program

Administrator shall promptly refund to City, as determined by City, all funds paid to Program Administrator under this Agreement that exceed the Program Administrator's total actual expenditures made in conformance with this Agreement, as determined by City's administrator, as of the effective date of termination. The City may also seek all legal and equitable remedies against Program Administrator for breaching this Agreement. Nothing contained in this Section 10 shall limit a Program Administrator's duty of defense or indemnity in accordance with Section 13; provided, however, that the limitations of liability noted therein shall apply.

11. Independent Capacity. In the performance of this Agreement, Program Administrator and their respective officers, agents, subcontractors, employees, and volunteers, including the SBDC, shall each act in an independent capacity and not as officers, employees, agents or volunteers of the City or each other. This Agreement does not create an employment relationship between the Program Administrator, the SBDC and the City, or any of their respective officers, agents, employees and volunteers. The Parties intend and agree that Program Administrator and SBDC are acting as a vendor of the City, providing its services to the City as outlined more specifically in this Agreement.
12. Insurance. Program Administrator shall procure and maintain for the duration of the Agreement insurance, as further described in **Exhibit D**, against claims for injuries to persons, damages to property, and all other claim which may arise from or in connection with the performance of this Agreement and the results of that work by Program Administrator. Program Administrator shall deliver to City, and shall ensure that each Subcontractor delivers to City, a current certificate of insurance with attached policy endorsements demonstrating all Insurance Requirements in **Exhibit D**.
13. Defense and Indemnity. To the fullest extent permitted by law, Contractor shall, protect, defend (with legal counsel reasonably acceptable to City), indemnify, and hold harmless City, and its elected officials, officers, representatives, agents, and employees ("Indemnified Parties") from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, court costs, and litigation expenses and fees of expert consultants or expert witnesses reasonably incurred in connection therewith and costs of investigation) that arise out of or pertain to, directly or indirectly, in whole or in part, any performance of services under this Agreement, including: (i) the grants made under this Agreement that do not comply with the eligibility or any other requirements of this Agreement including Exhibit A; (ii) improper or inaccurate records kept regarding such grants; (iii) a Contractor breach of the law or the Compliance Certificate; or (iv) relating to a Contractor's negligent or wrongful act or omission. For purposes of this Section 13, a "Contractor" shall mean

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Program Administrator, SBDC, any subcontractor of the Program Administrator, anyone directly or indirectly employed by either of them, or anyone that either of them controls.

Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

Contractor shall not be liable for grants made in compliance with the guidelines set forth in this Agreement and any Exhibit hereto.

14. Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of California.
15. Venue. The venue for any suit concerning the Agreement, the interpretation or application of any of its terms and conditions, or any disputes arising out of or related to the Agreement or the services performed by the Program Administrator shall be filed in the County of San Diego, State of California.
16. Assignment. Program Administrator may not assign or transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of the City.
17. Entire Agreement. This Agreement constitutes the entire agreement between Program Administrator and City regarding the subject matter contained herein. All other representations, oral or written, are superseded by this Agreement. Neither party is relying on any representation outside of this Agreement.
18. Amendments. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of all parties.
19. Waiver. The failure of one party to enforce any term, covenant or condition of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce this, or any other term, covenant or condition of this Agreement. No waiver shall be deemed effective unless the waiver is expressly stated in writing and signed by the party waiving the right or benefit.
20. Survival. Unless otherwise specified herein, all terms and conditions of this Agreement shall survive the expiration of this Agreement.
21. Remedies. The rights and remedies in this Agreement are in addition to, and not a limitation on, all other rights and remedies available at law or in equity, and exercise of one right or remedy shall not be deemed a waiver of any other right or remedy.

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22. Recognition. If Program Administrator chooses to publicize the arrangements reflected in this Agreement and to give written recognition to the City relating to this Agreement, they shall recognize the City of Chula Vista and not one or more individual City employees.
23. Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Agreement. Program Administrator must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Agreement as provided herein if City, in its sole discretion, determines the delay is material.
24. Force Majeure. If a delay in performance is caused by any unforeseen event(s) beyond the control of the Parties, City may allow Program Administrator a reasonable extension of time to complete performance, but Program Administrator and any of its subcontractors will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Program Administrator. This provision does not apply to a delay caused by Program Administrator's acts or omissions. Program Administrator is not entitled to an extension of time to perform if a delay is caused by Program Administrator's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Program Administrator's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.
25. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall constitute one agreement binding on all Parties hereto, notwithstanding that all of the Parties are not signatory to an original or same counterpart. The Parties agree that signatures transmitted electronically via Portable Document Format (PDF) attachment shall be binding as if they were original signatures.

[Signatures on following page]

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IN WITNESS WHEREOF, this Agreement is executed as of the Effective Date by City and Program Administrator, each acting by and through their authorized officers.

THE SAN DIEGO FOUNDATION

THE CITY
OF CHULA VISTA

By: _____
Name: _____
Its: _____

By: _____
Maria V. Kachadoorian
City Manager

APPROVED AS TO FORM:

On Behalf of The San Diego Foundation

By: _____

OFFICE OF THE CITY ATTORNEY

CITY ATTORNEY

BY: _____

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EXHIBIT A – STATEMENT OF WORK

1. SCOPE OF WORK

Program Administrator shall administer direct grants to small businesses and nonprofits (as described herein) in the City of Chula Vista, in response to a disproportionate impact by the COVID-19 crisis on these small businesses and nonprofits and needs related to the City of Chula Vista.

2. BACKGROUND

On August 24, 2021 the Chula Vista City Council expressed support for using ARP Act Funds to further support the provision of resources in the form of direct grants to small businesses and nonprofits, with priority consideration towards economically disadvantaged and at-risk small businesses and nonprofits providing services to the City of Chula Vista or within the City of Chula Vista.

The San Diego Foundation has provided over \$1.3 billion in grantmaking to nonprofits throughout San Diego County since 1975. In 2021, the non-profit agency awarded over one hundred million to support families and nonprofits during the pandemic. The San Diego Foundation, working with the SBDC, has been chosen as the Program Administrator in this Agreement for the administration of grants based on its existing framework, relevant experience, and demonstrated ability to expeditiously provide the City with the proposed services; its demonstrated history of working with at-risk and distressed businesses and nonprofits; and its relationship to and connection with economically disadvantaged communities and organizations in or serving the City of Chula Vista.

3. GOALS AND OUTCOME OBJECTIVES

Program Administrator, working with the SBDC, shall provide or direct financial assistance to nonprofits and small businesses impacted by the COVID-19 pandemic, with a focus described more specifically in Exhibit A, Section 5 herein and under the priority criteria set forth in this Agreement. The overall goal is to ensure equity in providing financial assistance.

4. SERVICE DELIVERY

- 4.1 Program Administrator and the SBDC will administer a program to provide direct grants to economically disadvantaged and at-risk businesses and to nonprofits serving the City of Chula Vista or its residents, as described in Section 6.
- 4.2 Program Administrator and the SBDC shall ensure a process to obtain accurate and complete applications for grants, document applicant's compliance with eligibility requirements as specified below, and approve the application based on the eligibility requirements outlined in Section 6 and the Agreement to which this exhibit is attached.

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EXHIBIT A – STATEMENT OF WORK

- 4.3 Program Administrator shall issue or direct payments to awardees for approved applications and maintain record of all payments.
- 4.4 Program Administrator shall provide information and report to the City, as described in Section 7, and elsewhere in this Agreement and its Exhibits.

5. GRANT ELIGIBILITY CRITERIA

- 5.1 Target Population. Program Administrator shall approve direct grants to eligible small businesses under the requirements set forth in Section 5.1.1 in this Exhibit A and eligible nonprofits under the requirements set forth in Section 5.1.2 in this Exhibit A. Within the eligible target applicants, Program Administrator and SBDC shall establish a method for scoring applications that provides priority consideration as described herein.
- 5.1.1 Small Businesses. Program Administrator shall approve grants to small businesses meeting the following Eligibility Criteria:
- (a) Small businesses with a net profit under \$150,000 or gross revenue under \$250,000, as reported in their 2019 federal taxes.
 - (b) Businesses with a demonstrated decline in revenue or service demand due to COVID-19 as evidenced by affidavit declaring a business decline that was caused by COVID-19 or other certified documentation. Must be a for-profit business located within the City of Chula Vista city limits.
 - (c) Must have a valid City of Chula Vista business license at time the application is made, or another proof of legitimacy that states that the business is located in or operating in the City of Chula Vista, such as the California State professional license, a 2019 tax filing with a schedule C, County of San Diego Fictitious Business Name or State of California sales tax certificate, including proof of at least one payment remittance to the California Department of Tax and Fee Administration.
 - (d) Must be independently owned and operated, with the principal office located within the City of Chula Vista city limits (publicly traded companies, chains and franchised businesses are ineligible)
 - (e) Priority businesses are:
 - Restaurants, coffee shops, ice cream parlors, fast food, fast casual
 - Personal care services (e.g.: barber shops, hair salons, nail salons, eyebrow/eyelash services, massage, tanning) Bars, breweries, tasting rooms
 - Community-serving services (e.g.: florists, tailors, dry cleaners, cobblers, embroidery, car wash, dog wash, etc.)
 - Events industry

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- Fitness (e.g.: gyms, dance and fitness studios, personal trainers, yoga, martial arts, etc.)
- Retail (clothing, home-improvement supplies and goods, electronics, beauty products)
- Daycare/childcare including afterschool programs, daycare, tutoring, indoor and outdoor youth sports such as gymnastics, dance, etc.
- Manufacturing (e.g.: food and clothing manufacturers)
- Senior care
- Home-based businesses (i.e. child care)

5.1.2 Non-profits

- 5.2 Priority Consideration. Program Administrator shall approve grant awards ranging from \$25,000 to \$100,000 from Program Administrator Supplemental Funds and the City's ARP funds, of which \$600,000 from the Supplemental Funds will be awarded to the San Diego Regional Policy & Innovation Center to assist and support the City of Chula Vista in its economic recovery following the COVID19 pandemic and support development of a new arts and culture related project to support cross border immigrant empathy. Eligible nonprofit applicants must certify and document that they are located in, or that they serve the City of Chula Vista, or its historically underserved populations. Program Administrator shall give priority consideration to nonprofits that meet any of the following criteria:

- 5.2.1 Nonprofits that focus on the following issues: performing arts, music and culture; early childhood education; senior services; and organizations involved in health, nutrition and well-being of the residents of Chula Vista.
- 5.2.2 Nonprofits that did not receive allocations through such programs as the Paycheck Protection Program, Shuttered Venue Operators Grant, California Relief Grant, and/or the Chula Vista CARES Small Business Grant Program. Having received this type of financial assistance shall not disqualify an applicant from receiving a grant under this program.
- 5.2.3 Other areas identified by the Program Administrator and SBDC, in consultation with and approved by the City, using similar metrics that meet the intent of this priority.

6. SPECIFIC REQUIREMENTS FOR SERVICE DELIVERY

- 6.1 Program Administrator will administer a direct grants program for eligible small businesses and nonprofits impacted by the COVID-19 pandemic in or serving the City of Chula

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Vista as set forth in this Exhibit A.

Program Outreach. Program Administrator shall work with the Small Business Development Center (SBDC) Network's host organizations as subcontractors/subrecipients to ensure equity of distribution, receive funds, conduct educational outreach to small businesses and nonprofits, and assist with completing grant applications. Subcontractors, subrecipients, and outreach partners will be eligible for program funding, in addition to outreach incentives of up to \$50,000 from either City's ARP Funds and/or Supplemental Funds, based on applicants and populations served under the intent of this Agreement and at the discretion of Program Administrator. Nonprofit and small businesses grantees shall also be eligible for outreach incentives.

6.2.1 Program Administrator shall oversee specialized, community-based outreach that targets businesses and nonprofits in areas of Priority Consideration before and after the application opens. Outreach tasks may include, but may not be limited to:

- (a) Disseminating presentations, newsletters, website content, and other marketing materials through community and special events that are translated into multiple languages, including, but not limited to: Spanish, Tagalog, Japanese, Chinese, Korean, Arabic, Somali, Swahili and others, as necessary;
- (b) Providing targeted education and technical assistance opportunities on the application process among areas of Priority Consideration by leveraging culturally and community competent facilitators;
- (c) Creating and disseminating media content to highlight small business literacy, wellness, entrepreneurship, and development resources among applicants;
- (d) Program Administrator shall partner with SBDC host organizations and trusted community-based organizations in and serving areas of Priority Consideration to provide outreach to hard-to-reach-communities, coordinating the distribution of information with community partners.
- (e) Identifying businesses and nonprofits that would benefit from receiving support in the process through which an applicant may need assistance to accurately complete an application for financial assistance and refer them to the appropriate organization that can assist;
- (f) Maintaining records of assistance provided; and
- (g) Collecting feedback on the needs of targeted communities.

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- 6.3 Program Administrator shall open the application process at least fourteen (14) days after the execution of this agreement and have and assist applicants complete an application. The application shall be open for a at least sixty (60) days.
- 6.4 Small Business Criteria. Program Administrator shall approve grant awards of \$10,000 dollars from City ARP funds to eligible applicants by certifying and documenting compliance with the following eligibility criteria:
- 6.4.1 Self-employed workers, independent contractors, sole proprietors, and corporations with no more than 100 employees in addition to the owner(s). No adult entertainment, cannabis businesses, arms dealers, or any other exclusions noted by ARP shall be eligible.
- 6.4.2 Businesses with a net profit under \$150,000 or gross revenue under \$250,000, as reported for 2019.
- 6.4.3 Businesses with a current City of Chula Vista Business Tax Certificate or another proof of legitimacy that states that the business is located in or operating in the City of Chula Vista, such as the California State professional license, a 2019 tax filing with a schedule C, County of Chula Vista Fictitious Business Name or State of California sales tax certificate, including proof of at least one payment remittance to the California Department of Tax and Fee Administration.
- 6.4.4 Businesses in operation on or before April 1st, 2020.
- 6.4.5 Businesses with a demonstrated decline in revenue or service demand due to COVID-19 as evidenced by affidavit declaring a business decline that was caused by COVID-19 or other certified documentation.
- 6.5 Nonprofit Criteria. Program Administrator shall approve grant awards ranging from \$25,000 to \$100,000, other than the award to SDRPIC, from Program Administrator Supplemental Grant Funds and the City's ARP funds to eligible nonprofit applicants by certifying and documenting that they are located in or that they serve the identified areas of Priority Consideration and historically underserved populations.
- 6.6 Program Administrator shall maintain records consisting of submitted applications and eligibility documentation attached thereto, for each applicant, and any other documentation or materials.
- 6.7 Program Administrator shall maintain documentation confirming, eligibility requirements.
- 6.8 Program Administrator shall maintain payment information for each applicant, as provided, and all other information required by law.

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EXHIBIT A – STATEMENT OF WORK

7. DATA COLLECTION AND REPORTING REQUIREMENTS

- 7.1 Program Administrator shall establish and maintain the following to be made available to City within forty-five (45) calendar days of contract execution, if applicable:
- 7.1.1 Individual electronic case folders may contain, but may not be limited to, the following information: Completed grant applications; documentation of priority requirements and documentation confirming eligibility requirements were met/not met; the date of approval or disapproval for each application and the date of notification; and award issued – including the date of issuance and award amount. If disclosure of business name/address is prohibited by law, Program Administrator may instead provide an alternate identification.
 - 7.1.2 Monthly Report. Program Administrator shall submit a monthly report to the City by the 15th day of the month following the first sixty days following the opening of the RFP with at least the following information:
 - 7.1.2.1 Number of applications received and detailed information about the applicant pool, based on information collected through the application.
 - 7.1.2.2 Status of applications.
 - 7.1.2.3 Awards issued: including name of recipient and/or alternative identification, total number of awards issued, and amount of award issued per applicant.
 - 7.1.3 Final Performance Report. Program Administrator shall provide a final performance report on program outcomes on or before the earlier of (i) 30 days after the exhaustion of all City funds, or (ii) June 30, 2023.
 - 7.1.4 Reporting Deadlines. Monthly and Final Performance Reports shall be due fifteen (15) days after the end of the reporting month.
 - 7.1.5 Amendment. If the Final Expenditure Date is extended in accordance with Section 3 of the Agreement, this Section 7 may be amended in connection with the extension as appropriate by the City Manager or designee.

8. AUTOMATION REQUIREMENTS

Email and Internet. Program Administrator shall maintain electronic mail capabilities through the Internet. However, Program Administrator is prohibited from transmitting confidential participant information via email or the Internet without requisite encryption protection or other methods that ensure the secure transmission of personal information.

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EXHIBIT A – STATEMENT OF WORK

9. ADMINISTRATIVE COSTS

Amount of ARP Funds. The City shall pay an amount of two million six hundred thousand dollars (\$2,600,000) in ARP Funds to the Program Administrator. Program Administrator, through the SBDC, shall direct and manage funds for the purpose of implementing this Agreement, and Program Administrator shall be wholly responsible for ensuring the ARP Funds are used only for allowable expenditures under this Agreement as such requirements are set forth on **Exhibit A**, Statement of Work and applicable law.

Supplemental Grant Funds. Program Administrator shall contribute one million dollars (\$1,000,000) to the program to provide grants to nonprofits using the same methodology and criteria for awards but requiring separate accounting as required by federal law. Program Administrator to select grantees and awards to range from \$5,000 to \$100,000. (“Supplemental Funds”).

Purpose of Funds. Program Administrator shall use the ARP and Supplemental Funds solely for the purposes set forth in, and in accordance with **Exhibit A**, Statement of Work, attached hereto and made a part hereof. Five percent (5%) of the total amount of the ARP Funds and Supplemental Funds will be paid to Program Administrator as fees to administer the program and up to two percent (2%) to reimburse third party costs, including but not limited to audit/legal fees, from the City’s General-Purpose revenues. The entirety of the \$3.6 million shall be paid out as grant funds. All fees and reimbursable costs shall be paid from the City’s non-federal general-purpose funds.

The Program Administrator’s flat fee for the administration of shall be paid 50% upon opening the program via the website portal, 25% upon final distributions of grant awards, and 25% within thirty days of final reporting of the program.

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EXHIBIT B – FEDERAL REQUIREMENTS

Program Administrator shall comply with all requirements of the City set forth in the Agreement and the exhibits thereto, including the business eligibility requirements of Exhibit A in addition to the following ARP Act Coronavirus Relief Fund requirements, including as follows:

1. DEBARMENT AND SUSPENSION.

- (a) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Program Administrator is required to verify that none of their principals (defined at 2 C.F.R. § 180.995) or affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (b) Program Administrator must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction they enter into.
- (c) This certification is a material representation of fact relied upon by City. If it is later determined that Program Administrator did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

2. RECORD RETENTION REQUIREMENTS. Program Administrator shall maintain and make available upon request all documents and financial records in their respective possession sufficient to establish compliance with subsection 601(d) of the Social Security Act, as amended (42 U.S.C. 801(d), which may include, but are not limited to, copies of the following:

- (a) general ledger and subsidiary ledgers used to account for (a) the receipt of Coronavirus Relief Fund payments and (b) the disbursements from such payments to meet eligible expenses related to the public health emergency due to COVID-19;
- (b) budget records for 2020 and 2021;
- (c) payroll, time records, human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
- (d) receipts of purchases made related to addressing the public health emergency due to COVID-19;
- (e) contracts and subcontracts entered into using Coronavirus Relief Fund payments and all documents related to such contracts;

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- (f) grant agreements and grant subaward agreements entered into using Coronavirus Relief Fund payments and all documents related to such awards;
 - (g) all documentation of reports, audits, and other monitoring of contractors, including subcontractors, and grant recipient and subrecipients;
 - (h) all documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
 - (i) all internal and external email/electronic communications related to use of Coronavirus Relief Fund payments; and
 - (j) all investigative files and inquiry reports involving Coronavirus Relief Fund payments.
3. **NO OBLIGATION BY FEDERAL GOVERNMENT.** The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Program Administrator, Fiscal Agent, or any other party pertaining to any matter resulting from this Agreement.
4. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.** Program Administrator acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Program Administrator's actions pertaining to this Agreement.

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EXHIBIT C – CITY REQUIREMENTS

1. **Contractor Certification of Compliance.** By signing this Agreement, Program Administrator certifies that each Party is aware of, and will comply with, these additional City-mandated clauses throughout the duration of the Agreement.

2. **Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations.** Program Administrator shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Program Administrator shall comply with the most restrictive requirement (i.e., that which provides the most access). Program Administrator warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement arising out of or related to this Agreement contains language which indicates the subcontractor's agreement to abide by any applicable access laws and regulations.

3. **Non-Discrimination Requirements.**

3.1 Nondiscrimination in Employment and Contracting. Program Administrator shall not discriminate against any employee or applicant for employment, nor against any subcontractor, vendor or supplier, on any basis prohibited by law and shall provide equal opportunity in all employment and contracting. Program Administrator shall ensure that its prime and sub-contractors comply with this City requirement.

3.2 Non-Discrimination in Grant Review. Program Administrator shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, provision or administration of any benefits or grants under this program. Program Administrator shall provide equal opportunity and unbiased consideration of all applicants and potential beneficiaries to participate in this Direct Grant Program. Program Administrator understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, or other sanctions. Program Administrator shall ensure that this language is included in contracts with any subcontractors, vendors and suppliers.

3.3 Compliance Investigations. Upon City's request, Program Administrator agrees to provide to City, within sixty (60) calendar days, a complete and accurate list of the names of all contractors, subcontractors, vendors, and suppliers that Program Administrator has used in the administration of this program. Further, Program Administrator agrees to provide to City, within sixty (60) calendar days, a complete and accurate list of, and communications with, all applicants who have applied for program funds during the duration of this Agreement. Program Administrator understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions.

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EXHIBIT C – CITY REQUIREMENTS

- 4. Business Tax Certificate.** Unless the City determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of Chula Vista is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a contract is executed.
- 5. Conflict of Interest Laws.** Program Administrator is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.* The City may determine that Program Administrator and/or Fiscal Agent must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Program Administrator shall submit the necessary documents to City.
- 6. Employment of City Staff.** City shall have the right to unilaterally and immediately terminate this Agreement if the Program Administrator and/or Fiscal Agent employs an individual, who, within twelve (12) months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the selection of Program Administrator and entry into this Agreement.
- 7. Submittals Required with the Agreement.** Program Administrator is required to submit all the following forms and information prior to the implementation of this Agreement:
- a. Insurance Certificates with all endorsements
 - b. Chula Vista Business License
 - c. Taxpayer Identification Form W-9 (if not currently on file)
 - d. IRS Letter of Non-Profit 501(c) (3) Status
- 8. Records Retention and Examination.** Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Agreement for five (5) years after termination or expiration of the Agreement. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City. Contractor shall make available all requested data and records at reasonable locations within City or County of Chula Vista at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City of Chula Vista or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Agreement. Contractor must include this provision in all subcontracts made in connection with this Agreement.

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EXHIBIT D – INDEMNIFICATION AND INSURANCE

1. Insurance. Contractor shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work, by Contractor, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:

1.1 Commercial General Liability. Insurance Services Office (“ISO”) Form CG 00 01 covering Commercial General Liability on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.

1.2 Workers' Compensation. Worker’s Compensation Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

1.3 Professional Liability (Errors and Omissions). Professional Liability (Errors and Omissions) appropriate to Contractor’s profession, with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.

1.4 Crime Insurance. A Crime Insurance (Fidelity Bond) policy in the amount of \$500,000 that will pay on behalf of the Contractor to the City for losses caused by the dishonest acts of the Contractor or its directors, officers, employees, agents, or designees. The policy shall include coverage for third party fidelity and name the City as “Loss Payees” for all third-party coverage secured. The policy shall not contain a condition requiring an arrest and conviction.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

1.5 Other Insurance Provisions. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:

1.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

1.5.2 Primary Coverage. For any claims related to this contract, Contractor’s insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-

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insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

1.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

1.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its agents, representatives, employees, and subcontractors.

1.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

2. Self-Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

3. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise acceptable to City.

4. Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5. Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

6. Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

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EXHIBIT D – INDEMNIFICATION AND INSURANCE

7. Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

8. Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

9. No Limitation of Obligations. The insurance requirements in this Agreement, including the types and limits of insurance coverage Contractor must maintain, and any approval of such insurance by the City, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.

Failure to Comply with Insurance Requirements. Failure to comply with any of the insurance requirements in this Agreement, including, but not limited to, a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that Contractor fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the City may have, the City may, at its sole option, (i) immediately terminate this Agreement; or (ii) order Contractor to stop work under this Agreement and/or withhold any payment that becomes due to Contractor.