

**AGREEMENT**

This AGREEMENT (this "Agreement") is made and entered into as of 4/03/20 (the "Effective Date"), by and between

CITY OF ANAHEIM, a public body, corporate and politic (the "City"),

A  
N  
D

ANAHEIM COMMUNITY FOUNDATION, a California non-profit public benefit corporation, hereinafter referred to as "ACF."

**RECITALS**

- A. As part of City of Anaheim's Economic Recovery Plan, the City of Anaheim will allocate funds to the Anaheim Community Foundation Anaheim to provide support to non-profit community based organizations that are providing services to Anaheim residents in need due to the COVID-19 crisis.
- B. City of Anaheim shall provide an amount of Two Million Dollars (\$2,000,000) in the form of a grant to ACF to provide support to non-profit organizations that submit applications for funding.
- C. ACF has designed and proposed a Rapid Response Grant Application Program ("Program") to provide immediate financial support to non-profit organizations who are providing support to at risk City of Anaheim residents during the COVID-19 crisis (see attached Spending Plan provided by Anaheim Community Foundation).
- D. ACF will provide monetary funding in amounts ranging from \$10,000.00 to \$250,000.00, to support non-profit organizations serving at risk City of Anaheim residents including, but not limited to school-aged children, youth and families, seniors, households living under the poverty line and others who have difficulties accessing necessities.
- E. The City and ACF (each, a "Party" and jointly, the "Parties") desire to enter into an agreement to provide such funds and support as needed.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS CONTAINED HEREIN, THE CITY AND THE ACF AGREE AS FOLLOWS:**

**Section 1. Proposed Plan for Rapid Response Assistance-**

**1.1 Immediate Assistance (Anticipated April 2020-June 2020)**

- A. ACF has designed and proposed a Rapid Response Grant Application Program (“Program”) to provide immediate financial support to community non-profits who are providing support to City of Anaheim residents during the COVID-19 crisis.
- B. City of Anaheim shall provide an amount of up to One Million, Four Hundred Thousand Dollars (\$1,400,000.00) in the form of a grant to ACF to provide support to non-profit organizations that submit applications for funding.
- C. ACF will provide monetary funding in amounts ranging from \$10,000.00 to \$250,000.00, to support community non-profit organizations serving vulnerable City of Anaheim residents including, but not limited to school-aged children, youth and families, seniors, households living under the poverty line and other who have difficulties accessing necessities.
- D. ACF Executive Committee shall present recommendations for approval from ACF Executive Committee to the ACF Board, followed by review and consultation by City of Anaheim City Manager’s Office. Immediate issuance of checks shall be made to selected non-profit organizations. ACF shall continue to monitor grant applications and provide review and recommendations on a weekly basis.
- E. The City and ACF shall have the sole discretion to determine whether the monetary funding request by the community non-profit organization benefits the City of Anaheim residents described above and reserves the right to decline any request for monetary funding request if acceptance is determined not to be in the best interest of the residents.
- F. In determining an organization’s eligibility for receipt of the funding provided herein, a recommendation shall be made by ACF Committee to ACF Board and then to Anaheim City Manager based upon certain criteria including but not limited to the following:
  - 1. The requestor is an incorporated nonprofit organization with a 501 (c)(3) designation, or a California certified tax-exempt nonprofit organization, or a public agency, including public schools or school foundation in school districts; or a committee formally established by City Council or an established club, association or organized group that provides services and programs directly to Anaheim for the benefit of its residents.
  - 2. Ability to demonstrate capacity to serve City of Anaheim residents including but not limited to: school-aged children, youth and families;

seniors; households living under the poverty line; and, other who have difficulty accessing basic necessities.

3. Ability to demonstrate ability to accommodate increasing community needs as a result of occurrences such as school closures, program cancellations, etc.
  4. Submitted budget demonstrating how programs/services will be funded with the monetary support.
- G. An application for ACF support shall be submitted to ACF Executive Committee, ACF Grant Committee, with Board Member and Executive Director to review:
1. Organizations must submit an application along with a written proposal to ACF staff.
  2. Proposals must include description of the organization, including its purpose and goals or mission.
  3. Summary of proposal to include the description of the program or service and how it benefits the most vulnerable Anaheim residents.
  4. Description of number of volunteers and volunteer hours anticipated for the program.
- H. ACF shall launch a call for proposals online. Non-profit organizations can complete and submit proposals online and submit to ACF for review and consideration. ACF Executive Committee shall review proposals on a weekly basis. ACF Executive Committee shall review and recommend proposals to ACF Board within one week of submission of the proposal by the non-profit organization. Proposals shall be followed by review and consultation by City of Anaheim City Manager's Office. The amount of funding allocated to a non-profit organization shall be determined based upon need and overall benefit to the community. In assessing proposals and amount of funding that may be provided, ACF Executive Committee and ACF Board and City shall consider the following:
1. Capacity to serve Anaheim's most at-risk communities, including but not limited to school-aged children, youth, and families, seniors, households living under the poverty lines, and others having difficulties assign necessities community needs, including food, meals and other vital necessities.
  2. Organization capacity of the group or entity applying for the support.
  3. How organization currently responding to COVID-19 crisis.
  4. Program time frame
  5. How funding would propel and sustain organization's program (including projected number of people to be served and geographic area).
  6. Financial viability and need of the group or entity applying for the support
  7. Other funding sources that will be utilized.

- I. Reporting.  
Grantees shall provide periodic reports to ACF as may be deemed appropriate based upon the amount of grant funding received and the program. ACF shall provide reports to City of Anaheim.

**1.2 Additional Community Assistance (up to \$600,000)**

- A. To provide additional emergency assistance, ACF will allocate a portion of the funding into ACF's Community Emergency Assistance Fund, which will help address needs through Anaheim's Emergency Operations Center.
- B. Additional grant opportunities for nonprofit organizations will be announced to help sustain impact and recovery efforts. This will be based on the emerging community needs resulting from the COVID-9 crisis (anticipated July 2020).

- 1.3 Nondiscrimination.** ACF agrees not to discriminate against any person or class of persons by reason of sex, color, race, creed, religion, marital status, handicap, ancestry or national origin in its provision of services. To the extent this Agreement provides that ACF offer accommodations or services to the public, such accommodations or services shall be offered by ACF to the public on fair and reasonable terms.

**Section 2 Term.**

The term of this Agreement shall commence on April 3, 2020 and shall terminate on December 31, 2020, unless sooner terminated as provided herein ("Term").

**Section 3 Compensation.**

It is understood by and agreed between the Parties to this Agreement that full and complete payment for all services provided in accordance with this Agreement, , and all expenses included, shall not exceed Two Million Dollars (\$2,000,000.00) without the prior written authorization of City. The above funding is inclusive of any administrative fees from ACF with respect to the Program.

**Section 4 Coordination of Services.**

**4.1 Representative of City.** The City Manager, or such person's designee, (the "Manager") shall represent the City in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by the City, the Manager is authorized to act unless this Agreement specifically provides otherwise or the context should otherwise require.

**4.2 Representative of ACF.** The Executive Director is hereby designated as being the principal and representative of ACF that is authorized to act on ACF's behalf with respect to the services and work to be provided hereunder and make all decisions in connection therewith.

**4.3 Prohibition Against Subcontracting and Assignments.** Neither the whole nor any interest in, nor any of the rights or privileges granted under this Agreement shall be assignable or transferable or encumbered in any way without the prior written consent of City. Any such purported assignment, transfer, encumbrance, pledge, subuse, or permission given without such consent shall be void as to City. This is a personal services contract and the ACF was chosen on the basis of characteristics unique to the ACF. City shall have the right to unreasonably or arbitrarily withhold its consent to any such assignment, transfer, encumbrance, pledge, subuse, or permission.

**4.4 Independent Contractor.** ACF and any agent or employee of ACF shall act in an independent capacity and not as officers or employees of City. City assumes no liability for ACF's actions and performance, nor assumes responsibility for taxes, bonds, payments, or other commitments, implied or explicit, by or for ACF. ACF shall not have authority to act as an agent on behalf of City unless specifically authorized to do so in writing. ACF acknowledges that it is aware that because it is an independent contractor, City is making no deduction from any amount paid to ACF and is not contributing to any fund on its behalf.

As respects all acts or omissions of ACF relating to ACF's responsibility for taxes, bonds, payments, or other commitments, implied, or explicit, by or for ACF, the ACF agrees to indemnify, defend (at the City's option), and hold harmless the City, its officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with the ACF's performance or failure to perform under this Section.

## **Section 5 Indemnification.**

As respects acts, errors or omissions in the performance of professional services under this Agreement, the ACF agrees to indemnify and hold harmless the City, its officers, agents, employees, representatives and volunteers from and against claims, demands, defense costs, liability or consequential damages arising directly out of the ACF's negligent acts, errors or omissions in the performance of its professional services under the terms of this Agreement or those of ACF's subcontractors or anyone for whom ACF is legally liable.

As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, the ACF agrees to indemnify, defend (at City's option), and hold harmless the City, its officers, agents, employees, representatives, and volunteers from and against claims, demands, defense costs, liability, or consequential damages arising out of or in connection with the ACF's (including ACF's employees, representatives, subcontractors or anyone for whom ACF is legally liable) performance or failure to perform under this Agreement; excepting those which arise out of the sole negligence of City.

## **Section 6 Enforcement of Agreement.**

### **6.1 Events of Default**

For purposes of this Section, the word "Default" shall mean the failure of ACF to perform any of ACF's duties or obligations or the breach by ACF of any of the terms and conditions set forth in this Agreement. In addition, ACF shall be deemed to be in Default upon ACF's (i) application for, consent to, or suffering of, the appointment of a receiver, trustee or liquidator for all or a substantial portion of its assets, (ii) making a general assignment for the benefit of creditors, (iii) being adjudged bankrupt, (iv) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing), or (v) suffering or permitting to continue unstayed and in effect for fifteen (15) consecutive days any attachment, levy, execution or seizure of all or a substantial portion of ACF's assets or of ACF's interests hereunder.

City shall not be deemed to be in Default in the performance of any obligation required to be performed by City hereunder unless and until City has failed to perform such obligation for a period of thirty (30) days after receipt of written notice from ACF specifying in reasonable detail the nature and extent of any such failure; provided, however, that if the nature of City's obligation is such that more than thirty (30) days are required for its performance, then City shall not be deemed to be in Default if City shall commence to cure such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

### **6.2 Immediate Termination for ACF's Default**

In the event of any Default by ACF, City may immediately terminate this Agreement if ACF has failed to perform such obligation for a period of thirty (30) days after receipt of written notice from City specifying in reasonable detail the nature and extent of any such failure. Such termination shall be effective immediately upon receipt by ACF of written notice from City. In such event, ACF shall have no further rights to perform services hereunder, and no further claim for payment except for fees (and permitted expenses) adequately rendered prior to such termination, and City shall have all other rights and remedies as provided by law.

### **6.3 Termination Without Cause**

City may terminate this Agreement at any time without the necessity of cause or Default by the other Party by giving thirty (30) days' notice in writing to the other Party. In such event, the Parties shall have no further rights hereunder, except that ACF shall be paid for all Services invoiced prior to such termination.

## **Section 7. Miscellaneous Provisions.**

**7.1 Waiver.** Inaction by City or ACF with respect to a Default hereunder shall not be deemed to be a waiver of such Default. The waiver by either City or ACF of any Default hereunder shall not be deemed to be a waiver of any subsequent Default.

## 7.2 Notices

All notices, demands or other writings to be made, given or sent hereunder, or which may be so given or made or sent by either City or ACF to the other shall be deemed to have been given when in writing and personally delivered or if mailed on the third (3rd) day after being deposited in the United States mail, certified or registered, postage prepaid, and addressed to the respective Parties at the following addresses:

If to City:                      City Clerk  
200 S. Anaheim Boulevard, 2nd Floor  
City of Anaheim  
Anaheim, California 92805  
FAX No. (714) 765-4105

With copies to:                Chris Zapata, City Manager  
City of Anaheim  
200 S. Anaheim Boulevard, 7th Floor  
Anaheim, California 92805  
FAX No. (714) 765-5164

City Attorney  
City of Anaheim  
200 S. Anaheim Boulevard, 3rd Floor  
Anaheim, California 92805  
FAX No. (714) 765-5123

To ACF:                         President  
200 S Anaheim Blvd, #433  
Anaheim, CA 92805

With Copies to:                Executive Director  
200 S Anaheim Blvd, #433  
Anaheim, CA 92805

**7.3 No Third Party Rights.** The Parties intend that no rights nor remedies be granted to any third party as a beneficiary of this Agreement or of any covenant, duty, obligation or undertaking established herein.

**7.4 Non-Liability of Members, Officials and Employees of the City.** No member, official or employee of the City shall be personally liable to ACF, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to ACF or ACF's successors, or on any obligation under the terms of this Agreement. ACF hereby waives and releases any claim ACF may have against the members, officials or employees of the City with respect to any Default or breach by City or for any amount which may become due to ACF

or ACF's successors, or any obligations under the terms of this Agreement. ACF makes such release with the full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

**7.5 Controlling Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**7.6 Time of the Essence.** Time is hereby expressly declared to be the essence of this Agreement and of each and every term, covenant and condition hereof which relates to a date or a period of time.

**7.7 Remedies Cumulative.** The remedies given to City and ACF herein shall be cumulative and are given without impairing any other rights given City or ACF by statute or law now existing or hereafter enacted and the exercise on any one (1) remedy by City or ACF shall not exclude the exercise of any other remedy.

**7.8 Effect of Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of its terms and provisions to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**7.9 Successors and Assigns.** This Agreement and the covenants and conditions contained herein shall be binding upon and inure to the benefit of and shall apply to the successors and assigns of City and to the permitted successors and assigns of ACF, and all references to "City" or "ACF" shall be deemed to refer to and include all permitted successors and assigns of such Party.

**7.10 Entire Agreement.** This Agreement and the exhibits hereto contain the entire agreement of the City and the ACF with respect to the matters covered hereby, and no agreement, statement or promise made by either City or ACF which is not contained herein, shall be valid or binding. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended, modified or added except by an agreement in writing signed by City and ACF.

**7.11 Authority.** Each individual executing this Agreement on behalf of a corporation, nonprofit corporation, partnership or other entity or organization, represents and warrants the he or she is duly authorized to execute and deliver this Agreement on behalf of such entity or organization and that this Agreement is binding upon the same in accordance with its terms. ACF shall, at City's request, deliver a certified copy of its governing board's resolution or certificate authorizing or evidencing such execution.



**7.12 Conflicts of Interest.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affect his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

7.12.1 ACF or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which: (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement; and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

7.12.2 If subject to the Act, ACF shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. ACF shall indemnify and hold harmless City for any and all claims for damages resulting from ACF's violation of this Section.

**7.13 Conflicts or Inconsistencies.** It is further expressly agreed by and between the parties hereto that, should there be any conflict between the terms of this Agreement and any of the exhibits or attachments hereto, this Agreement shall control and nothing herein shall be considered as an acceptance of the said terms of said exhibits or attachments conflicting herewith.

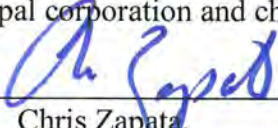
**[SIGNATURES BEGIN ON NEXT PAGE]**

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE RESPECTIVE DATES SET FORTH BELOW.

“CITY”

CITY OF ANAHEIM,  
a municipal corporation and charter city

Dated: 4/3/20

By:   
Chris Zapata,  
City Manager

ATTEST:

THERESA BASS, CITY CLERK

  
City Clerk

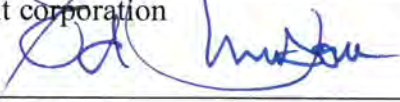
APPROVED AS TO FORM:

CITY ATTORNEY

By: 

Dated: \_\_\_\_\_

“ACF”  
ANAHEIM COMMUNITY  
FOUNDATION, California non-profit public  
benefit corporation

By:   
Ed Munson  
President

By:   
John Guastaferrro  
Executive Director



**ANAHEIM COMMUNITY FOUNDATION**  
200 S. Anaheim, Blvd. Suite 433  
Anaheim, CA 92805  
714-765-4419 | anaheimCF.org  
501(c)(3) 33-0033023

## **SPENDING PLAN**

As part of the city of Anaheim's \$15 million Economic Recovery Plan, \$2 million will be allocated to the Anaheim Community Foundation (ACF) to provide support to community nonprofits who are helping Anaheim residents in this time of need, and to further assist with long-term recovery, in consultation with the City Manager.

### **Process and Timeline**

#### \$1.4 million Rapid Response Grant Program

ACF has designed and proposed a Rapid Response Grant Application Program to provide immediate financial support to nonprofits that are working on the frontlines providing meals and other vital necessities to vulnerable communities in Anaheim.

- *April-June 2020*
- Provide immediate assistance by propelling the efforts of nonprofit partners who serve at-risk and vulnerable populations to provide food, meals, and vital necessities.
- Short-term grants (one to three months) ranging from \$10,000 to \$250,000.
- Call for proposals begin April 4
- ACF Executive Committee & Grants Committee will review applications on weekly basis and make funding recommendations, in communication with the city of Anaheim
- Immediate issue of checks to selected nonprofits
- Nonprofits providing immediate assistance to residents, including food, meals, and other vital necessities, will be prioritized

#### 2. Additional impact

ACF to allocate remaining funding up to \$600,000 to:

- Address emergency needs identified by Anaheim's Emergency Operations Center (through our existing Community Emergency Assistance Fund)
- Develop of additional grant opportunities for nonprofits to sustain impact based on emerging needs due to the COVID-9 crisis in the coming months (anticipated July 2020).

### **Rapid Response Grant Criteria**

- Funding to support nonprofit organizations serving vulnerable populations and who present a clear case of direct impact to Anaheim. This includes providing local access to food, meals, basic necessities, and other materials or services to overcome barriers due to the pandemic.
- Nonprofits seeking funding must be able to demonstrate their capacity to serve Anaheim's most vulnerable communities, including school-aged children, youth, and families; seniors; households living under the poverty line; and others who have difficulties accessing necessities.
- Funding will be provided to help nonprofit organizations accommodate increasing community needs as a result of such occurrences as school closures, program cancellations, etc.
- Grant amounts will range from \$10,000 to \$250,000
- Applicants must be a nonprofit 501(c)(3) organization
- Funded programs/services must be quantified with a submitted budget

### **Grant Application Questions**

An online grant form will include the following questions:

- Organization Name
- 501c3 Tax ID
- Contact name, email, phone
- Organization mailing address
- Organizational Mission
- How are you currently responding to the pandemic to provide food, supplies and vital services to Anaheim residents?
- How would funding help propel and sustain these efforts?
- Please quantify impact, including:
  - Projected number of people to be served
  - Geographic area to be served
  - Timeframe, from one to three months
  - Number of meals and/or other basic necessities, etc.
  - Number of volunteers and volunteer hours anticipated for the program
  - Other information
- Amount Request (range \$10,000 - \$250,000)
- Upload budget of how funds will be used. Include:
  - Quantity and cost of goods
  - Staff time directly related impact, if not already covered
  - List other funding sources you will be utilizing

### **Review Committee**

Grant applications will be reviewed by the ACF Executive Committee (Ed Munson, Kim Chips, Jeff Hunter), ACF Grant Committee (Stephen Sain and Bruce Solari), with board member Larry Pasco and Executive Director John Guastafarro. ACF commendations will be shared with the City Manager's office. In determining proposals and amount of funding, the following will be considered:

- Capacity to serve Anaheim's most at-risk communities, including but not limited to school-aged children, youth, and families, seniors, households living under the poverty lines, and others having difficulties assign necessities community needs, including food, meals and other vital necessities.
- Organization capacity of the group or entity applying for the support.
- How organization currently responding to COVID-19 crisis.
- Program time frame
- How funding would propel and sustain organization's program (including projected number of people to be served and geographic area).
- Financial viability and need of the group or entity applying for the support
- Other funding sources that will be utilized.

### **Reporting**

Grantees are asked to provide periodic impact reports based on the scope of the grant. ACF will compile and share impact reports with the city of Anaheim.

### **Adminstration**

The Program will be administered by Anaheim Community Foundation, in communication with the city of Anaheim. There is a proposed administrative fee of 5-7% to be agreed upon by ACF and the City.