

**GRANT AGREEMENT BETWEEN
THE CITY OF MARICOPA
AND**

This Agreement dated this ___ day of _____, 2020, between the CITY OF MARICOPA, an Arizona Municipal Corporation ("City"), and _____, an Arizona _____ ("Recipient").

WHEREAS, on March 11, 2020, Governor of the State of Arizona, Douglas A. Ducey, determined that the COVID-19 outbreak presents conditions in Arizona that justified his declaration of a State of Emergency; and

WHEREAS, on March 13, 2020, the President of the United States of America, Donald J. Trump, found and proclaimed that the COVID-19 outbreak in the United States constituted a national emergency; and

WHEREAS, on March 20, 2020, pursuant to the Code of the City of Maricopa, Arizona ("City Code"), Section 2-34(d), and A.R.S. Section 26-311(A), the Mayor of the City of Maricopa, Christian Price, declared that a local emergency exists throughout the City of Maricopa, Arizona due to the COVID-19 outbreak which presents conditions in the City that endanger life; and

WHEREAS, the State of Arizona received \$1.86 billion in coronavirus relief funding from the federal government, \$441 million of which was allocated to provide relief to cities, towns and counties that did not receive federal funding directly, known as the AZ Cares Fund; and

WHEREAS, the City of Maricopa received \$5,984,522 of AZ Cares funds from the State of Arizona; and

WHEREAS, according to the Grant Agreement Terms and Conditions, the purpose of the AZ Cares Fund was the "distribution to local Arizona jurisdictions of federal financial assistance from the U.S. Department of Treasury's Coronavirus Relief Fund (CRF), Catalog of Federal Domestic Assistance (CFDA) number 21.019, as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act;" and

WHEREAS, according to guidance issued by the Department of Treasury, grants to small businesses which faced interruption caused by required closures are considered eligible expenses under the CARES Act; and

WHEREAS, the guidance provided by the Governor Ducey's Office indicated that the AZ Cares funds were to be direct, flexible funding to local governments and the purpose of the AZCares Fund was to provide local jurisdictions as much financial flexibility as possible while not duplicating other federal funding streams; and

WHEREAS, the Governor's Office further indicated that "once the local jurisdiction has reimbursed the previously incurred public health and public safety cost, they are free to deploy the local resources to any purpose decided upon by that jurisdiction;" and

WHEREAS, the City's Business Reemergence Program is limited to rent assistance during the Stay Home, Stay Healthy and Stay Connected issued by Governor Doug Ducey on March 30, 2020 and

reimbursement for the purchase of personal protective equipment (PPE) which promotes community health and safety; and

WHEREAS, the City's Food & Aid Distribution Non-Profit Assistance is limited to non-profit entities that have supported the citizens and promoted community health and safety of the City of Maricopa during this emergency; and

WHEREAS, in order to qualify for funds from the City of Maricopa, businesses or non-profits were required to submit an application detailing their need for funding for reimbursement of rent or PPE, all applications were reviewed and approved by a committee, a copy of Recipient's application is attached as Exhibit A and incorporated by reference herein; and

WHEREAS, Recipient was financially impacted by state-mandated closures or suffered financial harm from the COVID-19 crisis or restrictions enacted by federal, state, and local governments to address the COVID-19 crisis; and

WHEREAS, pursuant to A.R.S. Section 36-190 a city or town may provide services to its residents beyond the basic level of service provided by the County Department of Health to provide public health services to its residents; and

WHEREAS, the City may appropriate and spend public monies in connection with economic development activities and the Mayor and City Council finds that the expenditures of AZ Cares Funds to small businesses and non-profits will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the citizens of the City of Maricopa; and

WHEREAS, the City is a municipal corporation operating under the provisions of Title 9 of the Arizona Revised Statutes and, as such, considers program services to be an integral part of the services offered to its citizens.

NOW, THEREFORE, IT IS AGREED BETWEEN BOTH PARTIES AS FOLLOWS:

1. **GRANT USE**: Recipient is awarded a grant under the Program exclusively to be used for costs related to the purchasing of personal protection equipment (PPE) and other materials that help adhere to recommended COVID-19 health practices (i.e., one-use wipeable menus, PPE for employees and customers) and/or rent/mortgage payments from March, April and May 2020 due to financial burden caused by COVID-19 or the restrictions enacted by federal, state, and local governments to address the COVID-19 crisis as more specifically set forth in Exhibit A (collectively, "COVID-19 Related Expenses"). Recipient acknowledges that none of the COVID-19 Related Expenses were paid for with prior federal or state CARES Act funding.

2. **TERM**: The term of this Agreement shall commence on the date listed above and expire on December 30, 2020 ("Term").

3. **FUNDING AND MANNER OF PAYMENT**: In consideration for use of grant funds in accordance with Section 1, City awards an amount of \$_____ ("Funding"). City shall disburse the Funding within thirty (30) days of execution of this Agreement. In the event Recipient does not provide sufficient receipts, invoices, or reports detailing use of Funding, in accordance with Section 4, Recipient shall reimburse City for any Funding amount not used in accordance with this Agreement.

Recipient hereby acknowledges and accepts that Funding is not a gift and is being provided to Recipient in accordance with the Maricopa Small Business Reemergence Program or the City's

Food & Aid Distribution Non-Profit Assistance, the AZ CARES Fund, the CARES Act and the terms and conditions of this Agreement, and is for the benefit of City of Maricopa residents.

4. RECEIPTS AND INVOICES: On or before January 15, 2021, Recipient shall provide City will a detailed report showing receipts and invoices sufficient to justify expenditures relating to Funding. Recipient shall maintain records of all receipts and invoices relating to Funding. Recipient agrees to make its records and accounts available for inspection during reasonable business hours upon written request for inspection by the City. Recipient shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

5. RESTRICTION UPON USE OF FUNDS: Recipient submitted a specific grant application to City that specified its financial harm suffered from the COVID-19 crisis. Recipient agrees to apply the entire Funding solely to those expenses identified in this Agreement. Recipient agrees not to use Funding for any other unauthorized purpose. Recipient shall refund City for any and all Funding used for any unauthorized purpose no later than **thirty (30) days** following the expiration or termination of this Agreement, whichever comes first. Any Funding used for unauthorized purposes shall constitute a lien in favor of the City against amounts remaining to be paid under this Agreement and may be deducted therefrom by the City at its sole option without prejudice to any other available remedies.

6. TERMINATION: This Agreement shall automatically terminate under expiration of the Term specified in Paragraph 2 hereof. This Agreement may also be terminated by the City upon breach by Recipient of any provision of this Agreement. Paragraph 3 shall survive termination of this Agreement to the extent that amounts remain payable under this Agreement to Recipient for Services provided by Recipient prior to termination of this Agreement, or Recipient must reimburse the City for any Funding not used in accordance with this Agreement.

7. RELATIONSHIP OF THE PARTIES: At all times during the term of this Agreement, Recipient shall retain its status as an independent contractor. Recipient's employees shall not, under any circumstance be considered or held to be employees or agents of the City. The City shall have no obligation to pay or withhold state or federal taxes, to provide workers' compensation or to provide unemployment insurance, for or on behalf of the Recipient or Recipient's employees.

8. NO THIRD PARTY BENEFICIARIES: Only the Parties may enforce this Agreement. The Parties do not intend through this Agreement to confer enforceable rights on any non-party and do not intend to create any third party beneficiaries to this Agreement.

9. INDEMNIFICATION: Recipient shall defend, indemnify, and hold City, its officers and employees harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorneys' fees, which arise out of, or is in any way connected with this Agreement, or any of Recipient's employees, agents or subconsultants, and from all claims by Recipient's employees, subconsultants and agents for compensation for services rendered to Recipient in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall apply to any and all acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Recipient or Recipient's employees, subconsultants or agents. This section shall survive the expiration or early termination of the Agreement.

10. NOTICES: All notices to the other party required under this contract shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City:

City of Maricopa
Attn: City Manager
39700 W. Civic Center Plaza
Maricopa, AZ 85138

If to RECIPIENT:

Attn:

11. AMERICANS WITH DISABILITIES ACT: This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §12101-12213) and all applicable federal regulations under the Act, including 28 C.F.R. Parts 35 and 36. (Non-Discrimination: The Recipient shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The Recipient shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

12. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Recipient and supersede all prior negotiations, representations or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

13. ARBITRATION. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Recipient and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Recipient shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Recipient. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

14. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for

and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

15. CONFLICT OF INTEREST. This Agreement is subject to the provisions of A.R.S. § 38-511.

16. WAIVER OF TERMS AND CONDITIONS: The failure of City or Recipient to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

17. NONASSIGNMENT: Neither party to this Agreement shall assign its interest in the Agreement, either in whole or in part. Recipient shall not assign any monies due or to become due to it hereunder without the prior written consent of City.

18. SEVERABILITY: If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

19. UNDOCUMENTED WORKERS: Recipient understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. Under the provisions of A.R.S. §41-4401, Recipient hereby warrants to the City that Recipient and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Immigration Warranty"). A breach of the Immigration Warranty shall constitute a material breach of this Agreement and shall subject Recipient to penalties up to and including termination of this Agreement at the sole discretion of the City. The City retains the legal right to inspect the papers of any Recipient employee who works on this agreement to ensure that Recipient is complying with the Immigration Warranty. Recipient agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of Recipient and any of subcontractors to ensure compliance with Immigration Warranty. Recipient agrees to assist the City in regard to any random verifications performed.

Recipient shall not be deemed to have materially breached the Immigration Warranty if it establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Immigration and Nationality Act (8 U.S.C. 1324) and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this paragraph must be included in any contract Recipient enters into with any and all of its subcontractors who provide services under this agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Recipient or subcontractor.

20. NO KICK-BACK CERTIFICATION: Recipient warrants that no person has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in the Recipient. For breach or violation of this warranty, the City shall have the right to annul the Agreement without liability, or at its discretion to deduct from the compensation to be paid Recipient hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

21. ISRAEL BOYCOTT: Recipient shall not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel in accordance with A.R.S. §35-393.01.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year written above.

RECIPIENT

_____,
An Arizona _____

By: _____

Its: _____

CITY OF MARICOPA

An Arizona Municipal Corporation

Ricky A. Horst
City Manager

ATTEST:

Vanessa Bueras,
City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
Application