

**SUBRECIPIENT AND SERVICES AGREEMENT
HASTINGS ECONOMIC DEVELOPMENT
AND REDEVELOPMENT AUTHORITY**

**AND
UNITED WAY OF HASTINGS**

THIS AGREEMENT, is made and entered into by and between the Hastings Economic Development and Redevelopment Authority in and for the City of Hastings, a public body corporate and politic under the laws of the State of Minnesota, (hereinafter referred to as "HEDRA"), having its principal office at 101 4th Street East, Hastings, Minnesota 55033-1955, and United Way of Hastings, a nonprofit corporation under the laws of the State of Minnesota, having its principal office at 113 2nd Street East, Hastings, Minnesota 55033, hereinafter referred to as ("United Way").

WITNESETH

WHEREAS, the City of Hastings, pursuant to the Coronavirus Aid, Relief, and Economic Security Act of March 27, 2020 (the "CARES Act"), has received funds through the State of Minnesota for necessary expenditures incurred due to the public health emergency with respect to Coronavirus Disease 2019 (COVID-19) ("necessary expenditures"), as described and defined by official guidance on section 601(d) of the Social Security Act, as added by section 5001 of the Public Law 116-136 ("federal guidance").

WHEREAS, the federal guidance requires States, Tribal governments, or units of local governments to use the funds received to cover only those costs that (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of March 27, 2020, for the local government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

WHEREAS, the COVID-19 coronavirus pandemic has created emergency and exigent circumstances for individuals and businesses necessitating immediate response and implementation of programs to provide relief aid to impacted individuals, families, communities and business.

WHEREAS, the creation of a relief grant program for eligible nonprofit entities that provide supplies and services to individuals and families directly impacted by a loss of income due to COVID-19 is an eligible expenditure of disbursements from the federal Coronavirus Relief Fund established under the CARES Act (the "Coronavirus Relief Fund").

WHEREAS, the Hastings City Council on September 8, 2020 adopted the Hastings Non-Profit Relief Program as described in detail on Attachment A (the "Program") with the objective of providing financial support to local non-profit organizations negatively impacted by COVID-19. The Program is funded by the Coronavirus Relief Fund. Under the Program, qualifying nonprofit entities are eligible to receive a grant of up to \$5,000 for necessary expenditures.

WHEREAS, due to the anticipated volume of applications for the Program, HEDRA believes it would be prudent to obtain services of a third-party administrator to implement the Program.

WHEREAS, United Way, a nonprofit corporation serving the City of Hastings, has a well-developed technology platform, processes, and staff capacity in place to assist HEDRA in implementing the Program and has offered to do so.

WHEREAS, there is an immediate and serious need for these services that cannot be met with other procurement methods and the services contracted for are limited to those necessary to meet the emergencies facing individuals and families that the Program is intended to benefit.

NOW THEREFORE, the parties, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, agrees as follows:

I. Statement of Work.

United Way shall administer the Program to provided funding of up to \$50,000 (less compensation to be paid to United Way) to eligible nonprofit entities providing services to Hastings residents utilizing the grant process, grant application and grant criteria established for the Program as described in Attachment A and utilizing the Program process described in Attachment B. HEDRA and the City of Hastings shall make final determinations regarding eligibility and awards under the Program and HEDRA and the City of Hastings retain the right to deny disbursement of funds under the Program if the applicant is found not to comply with all conditions of the Program or if the disbursement is not an eligible disbursement under the CARES Act. The City shall have the right to request or initiate modifications at any time. Representatives of the City and United Way will meet as necessary to review the Program process and adjust or modify that process as deemed necessary.

II. Other Duties of United Way.

- A. At all times, United Way shall have a qualified manager to oversee the implementation of the Program.
- B. United Way shall make a designated representative available at all reasonable times to report to and confer with the designated agents of the City/HEDRA with respect to the implementation of the Program.

III. Funding, Compensation and Reporting.

- A. For United Way's faithful performance of this Agreement, HEDRA hereby agrees to compensate United Way in the amount of ten percent (10%) of the amount of all funds disbursed to eligible nonprofit entities under the Program, with the compensation not to exceed \$5,000.
- B. The above amounts shall fully compensate United Way for all costs. No claim for services and/or costs provided by United Way, not specifically provided for in this Agreement will be honored by the HEDRA or the City.

IV. Time for Completion.

The services described in the Statement of Work shall be commenced on _____, 2020,

and will be completed upon and through _____, provided that all grant funds must be disbursed by November 15, 2020.

V. Project Management.

The City/HEDRA and United Way will each assign specific individuals as principal project members and ensure the major work and coordination will remain the responsibility of the individuals during the term of the Agreement.

VI. General Requirements.

- A. Uniform Administrative Requirements** - United Way shall comply with applicable uniform administrative requirements, as described in 2 C.F.R. 200 and contained in Attachment C, as the same may be amended and supplemented from time to time, with respect to its receipt and use of the Program funds.
- B. General Compliance** – United Way agrees to comply with all applicable federal, state and local laws and regulations governing the Program and funds provided under this Agreement.
- C. City’s Rights** -- HEDRA reserves the right to cancel this Agreement without penalty, if circumstances arise which prevent HEDRA from performing its duties herein.
- D. Amendment or Changes to Agreement.**
1. HEDRA or United Way may request changes that would increase, decrease or otherwise modify the Statement of Work. Such changes and method of compensation must be authorized in writing in advance by HEDRA.
 2. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement are valid only when reduced to writing and are duly signed by the parties.
 3. Modifications or additional schedules may not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term “this Agreement” includes any future amendments, modifications, and additional schedules made in accordance with these terms.
- E. Notices** -- All notices to be given by either party to the other hereunder shall be in writing and deemed to have been given when delivered personally or when deposited in the United States mail, registered or certified postage prepaid, addressed as follows:

To: United Way at:
113 2nd Street East
Hastings, Minnesota 55033

To: HEDRA at:
c/o City of Hastings
Attn: City Administrator

101 East 4th Street
Hastings, MN 55033

or addressed to any such party at such other address as such party shall hereafter furnish by notice to the other party.

F. **Equal Employment Opportunity/Access to Records** – United Way agrees for itself and its successors and assigns, that during the term of this Loan Agreement:

1. **Equal Employment.** United Way agrees to comply applicable federal, state and city regulations, statutes and ordinances pertaining to the civil rights and non-discrimination in the application for and employment of applicants, employees, subcontractors and suppliers of United Way. Among the federal, state and city statutes and ordinances to which the United Way shall be subject under the terms of this Contract include, without limitation, Minnesota Statutes, section 181.59, 42 U.S.C Section 2000e, et. seq. (Title VII of the Civil Rights Act of 1964), 29 U.S.C Sections 621-624 (the Age Discrimination in Employment Act), 42 U.S.C Sections 12101-12213 (the Americans with Disability Act or ADA), 29 U.S.C Section 206(d) (the Equal Pay Act), 8 U.S.C Section 1324 (the Immigration Reform and Control Act of 1986) and all regulations and policies promulgated to enforce these laws.
2. **City Recourse.** In the event of United Way's noncompliance with these nondiscrimination clauses, the contract may be cancelled, terminated, or suspended, in whole or in part.
3. **Access to Records.** Pursuant to Minn. Stat. §16C.05, subd. 5, United Way agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of HEDRA or the City and involve transactions relating to this Agreement. United Way agrees to maintain these records for a period of six years from the date of termination of this Agreement.

G. **Certifications** – United Way certifies to the best of its knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid by or behalf of United Way to any person or persons for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreements.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative

agreement, United Way shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

3. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31 U.S.C. §1332. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

VII. Responsibility for Acts or Omissions.

- A. Each party agrees that it will be responsible for its own acts and omissions and the acts and omissions of its employees, elected officials, and agents as they relate to this Agreement and for any liability resulting therefrom, to the extent authorized by law, and will not be responsible for the acts and omissions of the other party or their employees, elected officials, and agents, or for any liability resulting therefrom. HEDRA's and the City's liability is governed and limited by the Municipal Tort Claims Act, Minnesota Statutes chapter 466, and other applicable law.
- B. United Way shall defend and indemnify the City and HEDRA, their officers, agents, and employees from all claims, actions, or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, resulting from any act or omission by United Way or any person employed by United Way in carrying out the terms of this Agreement.
- C. Workers' Compensation Insurance Required - Each party shall be responsible for injuries or death of its own personnel. Each party will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing services pursuant to this Agreement. Each party waives the right to sue any other party for any workers' compensation benefits paid to its own employee or volunteer or their dependents.
- D. Responsible for Own Equipment - Each party shall be responsible for damages to or loss of its own equipment. Except as expressly provided herein, each party waives the right to sue any other party for any damages to, or loss of its equipment.
- E. Each party warrants that it is able to comply with the obligations of this Agreement through commercial insurance or a self-funding program.
- F. All insurance policies or self-insurance certificates are open to inspection by the other party and copies of the policies or certificates of self-insurance shall be submitted to a party upon written request.

VIII. Assignment.

HEDRA and United Way each binds itself and its successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither HEDRA nor the United Way will assign or transfer their interest in this Agreement without the written consent of the other.

IX. Termination.

This Agreement will continue in full force and effect until completion of the Project unless either party terminates the Agreement. Either party may terminate this Agreement, with or without cause, by providing 30 days written notice to the other party.

In the event of termination, the United Way will deliver all work products and supporting documentation developed up to the time of termination.

X. Alterations.

Any alteration, variation, modification or waiver of the provisions of the specifications that may have occurred during the bidding process or amendments to this Agreement are valid only when reduced to writing.

XI. Interpretation of Agreement, Venue.

This Agreement will be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this agreement must be venued in the appropriate court of jurisdiction in Dakota County, Minnesota.

XII. Independent Contractor.

It is agreed by the parties, that at all times and for all purposes, within the scope of the Agreement resulting from this solicitation, the relationship of United Way to HEDRA and the City is that of independent contractor and not that of employee. No statement contained in this Agreement may be construed so as to find United Way or any of United Way's employees an employee of HEDRA or the City, and United Way and United Way's employees are not entitled to any of the rights, privileges, or benefits of HEDRA or City employees.

XIII. Waiver.

The waiver by either party of any breach under the terms of this Agreement or any rights or remedies arising under the terms of this Agreement will not constitute a waiver of the party's right to any rights and/or remedies with respect to any subsequent breach or default of the terms of the Agreement.

XIV. Subcontracting.

United Way agrees not to enter into any subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of HEDRA and the City.

XV. Insurance.

United Way is required to carry insurance of the kind and in the amounts shown below for the life of the Agreement. Certificates for Liability Insurance should state that the City and HEDRA, their officials, employees, agents and representatives are Additional Insureds.

1. General or Business Liability Insurance
\$1,500,000 per occurrence
\$2,000,000 aggregate per project

\$2,000,000 products/completed operations total limit
\$1,500,000 personal injury and advertising

Policy must include an "all services, products, or completed operations" Endorsement when appropriate.

2. Automobile Insurance

Commercial - When commercial vehicles are used in connection with a contract:

- a. Bodily Injury \$750,000 per person \$1,000,000 per accident
- b. Property Damage not less than \$50,000 per accident Coverage shall include: hired, non-owned and owned auto

Personal - When personal vehicles are used in connection with a contract, HEDRA and the City are not required to be named as Additional Insured, but proof of insurance is required prior to commencement of activities. Provider must provide HEDRA and the City with Endorsements from insurance company.

- a. Bodily Injury \$30,000 per person \$60,000 per accident
- b. Property Damage \$20,000 per accident

Automobile Insurance – When Rental vehicles are used in connection with a contract, the provider shall either purchase insurance from the rental agency or provide HEDRA and the City with proof of insurance as stated above.

3. Worker's Compensation and Employer's Liability. Provider must maintain appropriate Worker's Compensation coverage as required by Minnesota law.

4. Professional Liability Insurance is required when a contract is for service for which professional liability insurance is available for purchase.

- a. \$1,000,000 per occurrence
- b. \$2,000,000 aggregate

5. General Insurance Requirements

a. All policies must be written on an occurrence basis or as acceptable to HEDRA and the City. Certificates of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if company carries errors and omissions coverage.

b. United Way may not commence any work until Certificates of Insurance covering all of the insurance required for this project is approved and HEDRA has issued a notice to proceed. Insurance must remain in place for the duration of the original contract and any extension periods.

c. HEDRA and the City reserve the right to review United Way's insurance policies at any time to verify that HEDRA's and the City's requirements have been met.

d) Satisfaction of policy limits required above for General Liability and Automobile Liability Insurance, may be met with the purchase of an umbrella or excess policy.

Any excess or umbrella policy will be written on an occurrence basis, and if such policy is not written by the same insurance carrier, the proof of underlying policies shall be provided with any certificate of insurance.

XVI. Force Majeure.

Neither HEDRA and the City nor United Way may be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including, but not limited to: severe weather and storms, earthquake or other natural occurrences, demonstrations, strikes and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive.

XVII. Entire Agreement.

It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**Hastings Economic Development and
Redevelopment Authority in and for
the City of Hastings, a public body corporate and
politic under the laws of the State of Minnesota**

Dated: _____, 2020

By: _____
Martha Sullivan, President

**United Way of Hastings, a Minnesota nonprofit
corporation**

Dated: _____, 2020

By: _____
Its _____

ATTACHMENT A

Hastings Non-Profit Relief Program

DRAFT

ATTACHMENT B

Hastings Non-Profit Relief Program Process

PROGRAM PHASES:

- I. Application Management
- II. Review of Eligibility
- III. Grant Closing & Agreements for Approved Grants
- IV. Disbursement of Grant Funds
- V. Grant Audits
- VI. Program Reporting

Application Management:

Application Development - United Way will design an application for the Program that captures contact and nonprofit business data necessary to pre-sort for initial eligibility, and to contact selected applicants to initiate the confirmation and agreement process. At HEDRA's request, United Way can include demographic or survey questions the City/HEDRA would like to gather on all applicants - either for survey purposes or to establish preferences in awards.

Application Delivery - United Way will publish and host the application on-line, and electronically gather all application responses into a sortable spreadsheet. United Way will supply IT support and maintain the underlying architecture for the application portal, but will provide page links and access to the City/HEDRA in order to share and publicize the Program.

Application Review and Selection- At the designated closing time for the application, United Way will sever the portal link and conduct a high-level review of applications for eligibility, removing duplicate applications and those with obvious disqualifiers- such as a location not in the City of Hastings. United Way will randomize the remaining list, and assign each application a unique file number. HEDRA at its discretion can pre-set parameters for the selection process - identifying either application criteria to give preference in a broad sorting, or sub-dividing the list and awarding sub-grouping based on those divisions. Along with a witness/witnesses designated by HEDRA, United Way will conduct the selection based on either a straight randomization, or utilizing a set of rules of preference or distribution devised by HEDRA.

Applicant Notification - Utilizing language and messaging approved by HEDRA, United Way will notify applicants identified by the randomization of their initial selection, and instruct them on the requirements and process for confirming eligibility. United Way will notify all applicants not initially selected that they have been placed on a waitlist and will be notified if a slot or funding opens up.

Review of Eligibility:

United Way will manage the collection and review of submitted documentation confirming program and grant eligibility as defined by the Program rules, and any requirements tied to the funding source. United Way will create a secure platform to allow clients to upload documents demonstrating eligibility, and retain and store those documents for six (6) years (or a time period requested by the City and HEDRA). United Way will provide selected applicants with an outline of required program documents, a preliminary eligible budget template and certifications, and a secure link to upload those materials. Each applicant will be assigned to a member of United Way's review team, who will conduct follow-up and outreach with applicants, assist with identifying and gathering the necessary documentation, and answer any questions the applicant may have. For each selected applicant, a United Way reviewer will confirm the legal name of the business and its status as active and in good standing with the Secretary of State, confirm and note the physical address in the City of Hastings the applicant conducts business from, and confirm eligibility in each category defined by the Program guidelines - noting the source document utilized in the confirmation of each. A United Way reviewer will collect a proposed use of funds budget for each qualified applicant, and provide technical assistance to applicants to determine a final grant budget reflective of that nonprofit business' eligible expenses. The reviewer shall notify the applicant of the final approval, and note the qualified grant amount in the approval in order to facilitate generation of grant agreements. Where an applicant is deemed unqualified based on program criteria, United Way shall notify the applicant, provide the reason and basis for disqualification, and either confirm the disqualification if accurate, or work with the applicant to identify additional documentation to establish qualification. United Way will track and report on the type and nature of documents used to confirm each eligibility point, and will retain those documents for program audit for a period of six (6) years. At no point will applicant tax returns, payroll documents or other personal or financial records pass through HEDRA or City control nor will United Way deliver source documents or specifics of those documents to HEDRA or City staff and/or elected officials in order to maintain an arms-length relationship between business applicants, and City/HEDRA officials, and to protect client data privacy.

Grant Closing & Agreements for Approved Grants:

United Way shall produce individual grant agreements for each approved grant recipient based on an agreement format provided by the City/HEDRA. United Way will conduct a virtual closing with each client, securing an electronic signature on the agreement, and collecting the grant budget, payment instructions, and any other closing documents deemed necessary by the City/HEDRA. United Way will deliver those agreements and attachments to the City/HEDRA for payment in whatever format requested.

Disbursement of Grant Funds:

The disbursement of funds is to be conducted/controlled by the City/HEDRA. United Way will assist in gathering any relevant tax and bank forms necessary to facilitate those payments, to be delivered in a manner acceptable to the City/HEDRA.

Grant Audits:

Immediately upon the closing of the grant round, United Way shall conduct an audit of a percentage of grant recipients to determine and document eligible use of grant funds. United Way will contact businesses selected for audit, and – utilizing the grant budget included in the grant agreement and certified by the grantee - request evidence of expense and payment equal to, or greater, than the total grant award, and consistent with Program eligible expenses. United Way will retain the grantee’s audit documentation alongside their eligibility documents for the agreed upon retention period. Upon completion of all audits, United Way will issue a report to the City/HEDRA detailing the finding of those audits, including number and percentage of grantee pass/fails, and total dollars and percent of total grant dollars vs confirmed grant-eligible expenses. The number or percentage of total grantees to be audited shall be determined by the City/HEDRA. However, audit and expense confirmation will be time consuming, and detailed work, and - as grantees will already have the funds in hand - there are limited incentives to apply to encourage timely compliance. It will be expensive and impractical to audit all or even most grants. The City/HEDRA and United Way will agree on a percentage/count for audit that provides a meaningful sample of data, between 5-10% of recipients depending on total number of awards.

Program Reporting:

Upon completion of the application, review, award and audit stages, United Way will issue a final report to the City/HEDRA summarizing the project, detailing all recipients, and providing some level of data analysis. United Way will work with City/HEDRA staff to determine potential datapoints, but these may include:

- Total number of awards, total dollars awarded.
- Break-down of recipients by groups of individuals or families served by the nonprofit.
- Demographic breakdown of applicant pool vs final award pool.
- Percent of applicants determined ineligible in review, and breakdown of reason for ineligibility.

EXPECTED TIMELINE:

- Program Design, Operationalizing Requirements and Standards- 1 Week
- Application Design, Public Advertising of Grant Opportunity- 2 Weeks
- Open Application Period- 2 Weeks
- Initial Data Review and Cleaning, Sort and Selection of Applicants- 2 Days
- Secure Portal File and Access Link Generation, Client notifications and Secure Invitation- 5 Days
- Application Assistance, Eligibility Review, Grant Documentation and Closing- 4- 6 Weeks
- Performance of Eligible Expense Audits- 2-4 Weeks
- Final Report- 1 Week Estimated Term of Program: _____ Weeks.