

**CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
BETWEEN THE CITY OF CORPUS CHRISTI, TEXAS AND  
THE UNITED WAY OF THE COASTAL BEND**

This Chapter 380 Economic Development Incentive Agreement ("Agreement") is entered into between the City of Corpus Christi, Texas, a home-rule municipality ("City") and The United Way of the Coastal Bend, a Texas nonprofit corporation ("Nonprofit").

**WHEREAS**, the novel coronavirus, known as COVID-19, has created a global pandemic which has impacted Corpus Christi and surrounding areas and has led to the closing or minimization of many local businesses and non-profit organizations in the City and the accompanying loss of jobs and income of workers associated with these businesses and non-profit organizations; and

**WHEREAS**, the local non-profit organizations ("NGO's") are part of the backbone of support in the City and surrounding area to support persons who have lost jobs, income, food, housing, medical services and other essential services during the Covid-19 pandemic; and

**WHEREAS**, the City has established a program in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") under which the City has the authority to make grants of public funds for a public purpose, including but not limited to: promoting the local economy, creating and retaining jobs in the community, stimulating business and commercial activity in the community and fulfilling any public purpose that will benefit the residents of the City;

**WHEREAS**, the Nonprofit has proposed to administer a \$500,000 grant program for the City whereby the Nonprofit will receive and process requests for grants from local NGO's who are in need of assistance to continue their mission of providing food, clothing, housing, medical, educational, skills training, childcare or other essential services to the residents of Corpus Christi during the Covid-19 pandemic (the "Program"); and

**WHEREAS**, the Corpus Christi City Council has adopted Ordinance No. \_\_\_\_\_, authorizing the City to enter into this Agreement with the United Way of the Coastal Bend in the amount of \$500,000 to administer the Program for the City for the purposes stated in the Agreement;

**WHEREAS**, the City has concluded and hereby finds that this Agreement promotes a public purpose of serving the residents of Corpus Christi during the Covid-19 pandemic and, as such, meets the requirements under Article III, Sec. 52-a of the Texas Constitution and Chapter 380 Texas Local Govt.; and

**WHEREAS**, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380 of the Texas Local Government Code and other law, the Nonprofit has agreed to comply with certain terms and conditions regarding the disbursement of the grant funds to local NGOs; and

**NOW, THEREFORE,** in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Nonprofit agree as follows:

1. The recitals to this Agreement are hereby incorporated for all purposes.
2. **Effective Date.** The effective date of this Agreement ("Effective Date") is the latest date that either party executes this Agreement, or the date this Agreement has been finally approved by the Corpus Christi City Council. Nonprofit understands that this Agreement is dependent upon the approval of the Corpus Christi City Council.
3. **Term.** The term of this Agreement is for One Hundred and Eighty (180) days beginning on the Effective Date.
4. **Performance Requirements.**
  - a. Nonprofit agrees to use the \$500,000 to be provided by the City pursuant to this 380 Agreement to provide grants to NGO's located in Corpus Christi, Texas in accordance with Nonprofit's proposal, which is attached hereto as **Exhibit A** and incorporated by reference as if laid out herein in its entirety. The City will disburse funds to Nonprofit in stages as City receives properly supported invoices from the Nonprofit.
  - b. Nonprofit agrees to provide the City with a sworn certificate by an authorized representative of the Nonprofit, certifying the amount used.
  - c. Nonprofit shall ensure that the funds are being used by the NGO for a public purpose which complies with terms of this Agreement, Article III, Sec. 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code.
  - d. The City may audit Nonprofit's records to determine their compliance with the terms of this Agreement. Nonprofit, during normal business hours shall allow City reasonable access to its records and books and all other relevant records related to each of the economic development considerations and incentives and performance requirements, as stated in this Agreement.
5. **City's Responsibility.** The City will make funding available to Nonprofit to carry out the NGO funding and administrative fees in an amount no greater than \$500,000 pursuant to the terms and conditions of this Agreement. Any funds not expended by Nonprofit within One Hundred and Eighty (180) days of the effective date of this Agreement shall no longer be available under this Agreement and shall not be an obligation of the City. All unused funds shall be returned to the City upon termination of this Agreement.
6. **Warranties.** Nonprofit warrants and represents to City the following:
  - a. Nonprofit is a non-profit corporation duly organized, validly existing, and in good standing under the laws of the State of Texas and has all power and authority to carry on its business as presently conducted in Corpus Christi, Texas.
  - b. Nonprofit has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.

c. Nonprofit has timely filed and will timely file all local, State, and Federal tax reports and returns required by laws to be filed and all taxes, assessments, fees, and other governmental charges, including applicable ad valorem taxes, have been timely paid, and will be timely paid, during the term of this Agreement.

d. Nonprofit acknowledges that the funds transferred under this Agreement must be utilized solely for purposes authorized under State law and by the terms of this Agreement.

e. The person executing this Agreement on behalf of Nonprofit is duly authorized to execute this Agreement on behalf of Nonprofit.

f. Nonprofit does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, Nonprofit is convicted of a violation under 8 U.S.C. Section 1324a(f), Nonprofit shall repay any unspent payments received under this Agreement to the City, with interest at the Wall Street Journal Prime Rate, not later than the 120<sup>th</sup> day after the date Nonprofit has been notified of the violation. The Company shall further repay to the City its outstanding customer loan fund receipts dispersed under this Agreement (less any loan losses), not later than 60 days after receipt.

7. Compliance with Laws. During the Term of this Agreement, Nonprofit shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments.

8. Non-Discrimination. Nonprofit covenants and agrees that Nonprofit will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Project, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas.

9. Force Majeure. If the City or Nonprofit are prevented, wholly or in part, from fulfilling its obligations under this Agreement by reason of any act of God, unavoidable accident, acts of enemies, fires, floods, governmental restraint or regulation, other causes of force majeure, or by reason of circumstances beyond its control, then the obligations of the City or Nonprofit are temporarily suspended during continuation of the force majeure. If either party's obligation is affected by any of the causes of force majeure, the party affected shall promptly notify the other party in writing, giving full particulars of the force majeure as soon as possible after the occurrence of the cause or causes relied upon.

10. Assignment. Nonprofit may not assign all or any part of its rights, privileges, or duties under this Agreement without the prior written approval of the City. Such approval will not be unreasonably denied. Any attempted assignment without approval is void and constitutes a breach of this Agreement.

**11. Indemnity. Nonprofit covenants to fully indemnify, save, and hold harmless the City, and its officers, employees, and agents ("Indemnitees") against all liability, damage, loss, claims demands, and actions of any kind**

***on account of personal injuries (including, without limiting the foregoing, workers' compensation and death claims), or property loss or damage of any kind, which arise out of, or are claimed to arise out of Nonprofit's activities conducted under or incidental to this Agreement. Nonprofit must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based on those claims and demands with counsel satisfactory to Indemnitees, which choice of counsel shall not be unreasonably denied, and pay all charges of attorneys and all other costs and expenses of any kind arising from the liability, damage, loss, claims, demands, or actions. The requirements of this provision will survive the expiration or earlier termination of the Agreement.***

12. Events of Default by Nonprofit. The following events constitute a default of this Agreement by Nonprofit:

- a. The City determines that any representation or warranty on behalf of Nonprofit contained in this Agreement or in any financial statement, certificate, report, or opinion submitted to the City in connection with this Agreement was incorrect or misleading in any material respect when made.
- b. Any judgment is assessed against Nonprofit or any attachment or other levy against the property of Nonprofit with respect to a claim under this agreement remains unpaid, undischarged, or not dismissed for a period of 120 days.
- c. Nonprofit makes an assignment of funds received under this agreement for the benefit of creditors.
- d. Nonprofit files a petition in bankruptcy or is adjudicated insolvent or bankrupt.
- e. If taxes owed by Nonprofit become delinquent, and Nonprofit fails to timely and properly follow the legal procedures for protest or contest.
- f. Nonprofit changes the general character of business as conducted as of the date this Agreement is approved by the City.
- g. Nonprofit fails to comply with one or more terms of this Agreement.

13. Notice of Default. Should the City determine that Nonprofit is in default according to the terms of this Agreement, the City shall notify Nonprofit in writing of the event of default and provide 60 days from the date of the notice ("Cure Period") for Nonprofit to cure the event of default.

14. Results of Uncured Default by Nonprofit. After exhausting good faith attempts to address any default during the Cure Period and taking into account any extenuating circumstances that might have occurred through no fault of Nonprofit, as determined by the City Manager, the following actions may be taken for any default that remains uncured after the Cure Period.

United Way of the Coastal Bend  
4659 Everhart Road  
Corpus Christi, Texas 78411  
Attn: Libby Averyt, President

City:

City of Corpus Christi  
Attn.: City Manager  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

b. A copy of all notices and correspondence must be sent the City at the following address:

City of Corpus Christi  
Attn.: City Attorney  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

c. Notice is effective upon deposit in the United States mail in the manner provided above.

19. Amendments or Modifications. No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign Agreements on behalf of each party.

20. Relationship of Parties. In performing this Agreement, both the City and Nonprofit will act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

21. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

22. Severability.

a. If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose.

b. To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected by the law, and in lieu of any illegal, invalid,

or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

23. Venue and Law. Venue for any legal action related to this Agreement is in Nueces County, Texas. This Agreement is subject to all legal requirements in City Charter and Code of Ordinances of City of Corpus Christi, Texas and all other applicable County, State and Federal laws, and Nonprofit agrees that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, City and other applicable governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas without regard, however, to the conflicts of law's provisions of Texas law.

24. Sole Agreement. This Agreement constitutes the sole Agreement between City and Nonprofit. Any prior Agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

25. Survival of terms of Agreement and obligations of parties. The terms of this Agreement and the obligation of the parties relating to Section 14 shall survive the termination of this Agreement.


26. Public Information Act Requirements. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Nonprofit agrees that the contract can be terminated if the Nonprofit knowingly or intentionally fails to comply with a requirement of that subchapter.

27. Certificate of Interested Parties. Nonprofit agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.

**City of Corpus Christi**

By: \_\_\_\_\_  
Peter Zaroni  
City Manager

**APPROVED AS TO LEGAL FORM:**

Aimee Alcorn-Reed  
 2020.06.26 15:54:37  
-05'00'  
Assistant City Attorney Date

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

Attest:

By: \_\_\_\_\_  
Rebecca Huerta  
City Secretary

**United Way of the Coastal Bend**

By:

Libby Averyt  
President and CEO

Date:

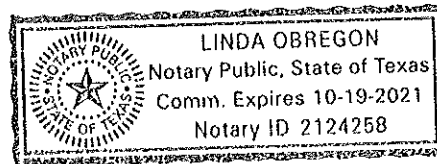
6-29-20

THE STATE OF TEXAS §

COUNTY OF NUECES §

This instrument was acknowledged before me on June 29, 2020, by Libby Averyt, President and Chief Executive Officer for United Way of the Coastal Bend, a Texas non-profit corporation, on behalf of the corporation.

Linda Obregon  
Notary Public, State of Texas





United Way  
of the Coastal Bend

## **Exhibit A**

### **UWCB - City of Corpus Christi Nonprofit Recovery Fund Guidelines**

#### **Nonprofit Recovery Fund:**

The City of Corpus Christi is proposing establishment of a Nonprofit Recovery Fund for nonprofits located and providing services in Corpus Christi, which have been impacted by the COVID19 pandemic. Through a redirection of \$500,000 in the Corpus Christi Business and Job Development Fund for economic development, resources are made available for this grant program. The City will contract with United Way of the Coastal Bend to administer the grants. United Way of the Coastal Bend is a local 501(c)3 organization established more than 80 years ago and has longstanding and comprehensive knowledge of the nonprofit community.

Nonprofit organizations eligible to apply for grants from the Nonprofit Recovery Fund will be those within the Corpus Christi city limits registered with the IRS as 501(c)3 or 501(c)6 organizations that provide health and human services, educational services or business support and job training.

Eligible organizations must have an annual operating budget of not more than \$3 million and also meet other eligibility requirements. Organizations that provide surgical or non-surgical abortion services are not eligible to receive grants from the Nonprofit Recovery Fund. The grants are intended to help those agencies that have suffered significant financial losses due to the economic shutdown.

#### **How it works:**

- Agency representatives must apply online at [www.uwcb.org](http://www.uwcb.org) to begin the application process and are subject to organizational review and financial assessment.
- Grants will range in value up to \$25,000 and will be approved based on factors such as need, location, planning, eligibility and availability of funds.
- Grant funds may be used for operational expenses, working capital, expenses of debt and workplace needs.
- Once an application is approved, agencies will be required to submit monthly reporting detailing how the funds were used.
- Any agency which receives grant funds from United Way must stay in operation and provide timely and complete reports to United Way of the Coastal Bend for a period of no less than three (3) months or they will be deemed in default of the program and the agency must return all funds received back to United Way within thirty (30) days' notice

from the United Way.

**Eligibility:**

- Grants will be awarded to agencies with a positive track record and in existence for more than three years.
- Eligible nonprofit organizations must have annual operating budgets of \$3 million or less.
- Funds are intended for use toward operational expenses, working capital, covering expenses of debt and workforce needs.
- Funds are to be used only for the purposes stated in the request.
- Approval is based on need, location, planning, eligibility and availability of funds.
- Currently provide health and human services, educational services, business support or job training in the Corpus Christi city limits.

**Required documents:**

- Evidence of 501(c)3 or 501(c)6 status.
- Most current audit for organizations with annual revenue more than \$750,000; financial review for organizations between \$100,000 to \$749,999 annual revenue; and board-certified financials for organizations with less than \$100,000 in annual revenue.
- Most recent 990.
- Provide specific data on a regular basis, as determined by United Way of the Coastal Bend.

**Summary of grant program cost:**

Grant Fund -- \$500,000

Grant Fund Administration -- 5% to be paid from grant fund

Total Grant Fund Program -- \$500,000