

RESOLUTION NO. 2020-72

RESOLUTION AUTHORIZING CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN WASHINGTON COUNTY, OREGON, AND CITY OF FOREST GROVE, OREGON, TO RECEIVE FUNDS TO ESTABLISH A SMALL BUSINESS GRANT PROGRAM

WHEREAS, the INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered between WASHINGTON COUNTY, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "County", and CITY of Forest Grove, acting by and through its City Council, hereinafter referred to as “City.” County and City may be jointly referred to herein as the “Parties” or individually as a “Party.”; and

WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and

WHEREAS, on March 8, 2020, the Governor of Oregon declared an emergency under ORS 401.165 *et. seq.* due to the public health threat posed by the novel infectious coronavirus (COVID-19); and

WHEREAS, on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law and established the \$150 billion Coronavirus Relief Fund (Fund) from which the U.S. Department of the Treasury made payments to eligible units of local government, including the County; and

WHEREAS, the County received a payment from the Fund which, subject to the requirements of the CARES Act, can be used to cover expenditures related to the provision of grants to small business to reimburse costs of business interruption caused by required closures and restrictions; and

WHEREAS, on June 23, 2020, the Washington County Board of Commissioners approved the distribution of \$10,000,000.00 from the County’s allocation of the Fund (Small Business Assistance funds) for small business grant support in Washington County; and

WHEREAS, the County desires that a portion of the \$10,000,000.00 Small Business Grant fund be transferred to its cities, recognizing that cities are in a good position to know the particular needs of their business communities; and

WHEREAS, the City, desires to implement and operate a program, subject to the requirements of the CARES Act and County criteria, to provide grants to small businesses located within the City’s jurisdictional boundaries for necessary expenses due to the COVID-19 public health emergency; and

WHEREAS, the City has requested a \$212,000.00 distribution from the Small Business Grant Program.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

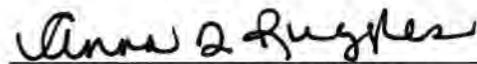
Section 1. The City Council hereby approves the Intergovernmental Agreement (IGA) with Washington County and City of Forest Grove to establish and administer a Small Business Program in Forest Grove to assist businesses recovering from impacts due to the COVID-19 public health emergency as follows:

- (1) County shall distribute \$212,000.00 from the Small Business Assistance funds within fourteen days of the County approval of the City's Program.
- (2) City may invoice the County for up to \$212,000.00 of the Small Business Assistance funds for use in establishing and administering a program for grants to small business.

Section 2. The City Manager is hereby authorized to execute the final IGA on behalf of the City of Forest Grove, notwithstanding substantial changes to IGA as provided in the attached Exhibit A.

Section 3. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 13th day of July, 2020.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 13th day of July, 2020.



Peter B. Truax, Mayor

**INTERGOVERNMENTAL AGREEMENT
BETWEEN WASHINGTON COUNTY AND CITY OF FOREST GROVE**
For Small Business Grant Program

This INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered between WASHINGTON COUNTY, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "County", and City of Forest Grove, an Oregon municipal corporation, acting by and through its City Council, hereinafter referred to as “City.” County and City may be jointly referred to herein as the “Parties” or individually as a “Party.”

RECITALS

1. WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and
2. WHEREAS, on March 8, 2020 the Governor of Oregon declared an emergency under ORS 401.165 *et. seq.* due to the public health threat posed by the novel infectious coronavirus disease (COVID-19); and
3. WHEREAS, on March 11, 2020, COVID-19, which spreads person-to-person through coughing, sneezing and close personal contact, was declared a pandemic by the World Health Organization; and
4. WHEREAS on March 13, 2020 the President of the United States declared the COVID-19 outbreak a national emergency; and
5. WHEREAS on March 23, 2020, Oregon Governor Kate Brown issued Executive Order 20-12 (EO 20-12) which, among other things, ordered closure and prohibited operation of a wide range of businesses, restricted the operations of restaurants, bars, brew pubs, wine bars, cafes, food courts and coffee shops, and required social distancing for other retail businesses; and
6. WHEREAS, on March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law and established the \$150 billion Coronavirus Relief Fund (Fund) from which the U.S. Department of the Treasury made payments to eligible units of local government, including the County; and
7. WHEREAS, the County received a payment from the Fund which, subject to the requirements of the CARES Act, can be used to cover expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures or restrictions; and
8. WHEREAS, the City, desires to implement and operate a program, subject to the

requirements of the CARES Act and County criteria, to provide grants to small businesses located within the City's jurisdictional boundaries for necessary expenses due to the COVID-19 public health emergency; and

9. WHEREAS, on June 23, 2020, the Washington County Board of Commissioners approved the distribution of \$10,000,000.00 from the County's allocation of the Fund (Small Business Grant Program fund) for small business grant support in Washington County; and
10. WHEREAS, the County desires that a portion of the \$10,000,000.00 Small Business Grant Program fund be transferred to its cities, recognizing that cities are in a good position to know the particular needs of their business communities; and
11. WHEREAS the City has requested a \$212,000 distribution from the Small Business Grant Program; and
12. WHEREAS, the County desires to provide the City a portion of the Small Business Grant Program funds for the provision of small business grants for expenses made necessary by the COVID-19 public health threat.

AGREEMENT

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals and in consideration of the terms, conditions and covenants set forth below, the Parties agree as follows:

Article 1 CITY OBLIGATIONS

- 1.1 City shall develop and implement a grant program (City Program) to provide grants to assist small business within the City's jurisdictional boundary. The City Program shall:
 - 1.1.1 Comply with the CARES Act and ensure all expenditures covered by grants provided with the Small Business Grant Program funds comply with the CARES Act and:
 - 1.1.1.1 Are necessary expenditures incurred due to the public health emergency with respect to the COVID-19 within the meaning the CARES Act; and
 - 1.1.1.2 Were not accounted for in the City's most recently approved budgets as of March 27, 2020; and
 - 1.1.1.3 Were incurred during the period that begins March 8, 2020 and ends on December 30, 2020.

November 20, 2020. No invoice from the County shall be required under this term.

- 1.7 Upon conclusion of the City Program, and no later than December 1, 2020, the City shall provide the County with a final report which, at minimum, will provide how many businesses received grants, demographic data on award recipients, information specifying participation by historically disadvantaged business owners, receipts, invoices and other relevant documentation showing compliance with the CARES Act and this Agreement, agency audits, if any, and any other information relevant to the City Program.
- 1.8 The City shall require that all written marketing materials, press releases and reporting regarding the City's Program or use of the City's allocation of the Small Business Grant Program will acknowledge the County as the funder.
- 1.9 The City agrees not to cover its own expenditures that may otherwise be eligible expenditures under the CARES Act with the Small Business Grant Program funds.
- 1.10 City will not use any of the Small Business Grant Program funds provided by the County as a revenue replacement for lower than expected tax or other revenue collections or for any other purpose not allowed by the CARES Act.
- 1.11 City will not use the Small Business Grant Programs funds for small business grant expenditures for which the City has already received any other emergency COVID-19 supplemental funding for the same expenditure.
- 1.12 City will retain, and require any recipient or contractor administering the City's Program to retain, all necessary documentation of all uses of the Small Business Grant Program funds including but not limited to invoices and receipts in a manner consistent with §200.333 *Retention requirements for records of 2 CFR 2 Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Such documentation shall be promptly produced to the County upon request and may be subject to audit by the County or County's authorized agent.
- 1.13 City will comply, and require any recipient or contractor administering the City's Program, to comply with all terms in Attachment R.

Article 2 COUNTY OBLIGATIONS

- 2.1 County shall review City Program plan and provide comments or approval within 5 business days of submission. In the event the County requests changes to the City Program, City will resubmit the City Program plan as soon as practical and County will review and provide comments or approval within 2 business days of resubmittal. Review and resubmittal shall continue until the County approves the

City Program, if at all. Nothing in this section requires the County to approve the City Program.

- 2.2 County shall distribute \$212,000 from the Small Business Grant Program funds within fourteen days of County approval of the City's Program.

Article 3 GENERAL PROVISIONS

3.1 LAWS OF OREGON

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.

3.2 DEFAULT

Time is of the essence in the performance of the Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

3.3 INDEMNIFICATION

This Agreement is for the benefit of the parties only. City agrees to indemnify and hold harmless the County, and its elected officials, directors, officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. The above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). City shall give County prompt written notice of any action or suit filed or any claim made against the County that may result in litigation in any way related to this Agreement. County retains the right, in its discretion, to defend any action with Counsel of this choosing.

3.4 INSURANCE

City shall maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 through 30.274.

3.5 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be

binding unless in writing and signed by both Parties. The Parties agree that this Agreement may require modification as additional guidance becomes available.

3.6 DISBURSEMENTS REMAIN SUBJECT TO RECOVERY

All disbursements and payments under this Agreement, remain subject to recovery from City in accordance with the following:

- i. Notice of Underexpenditure, Overexpenditure, or Misexpenditure.

If County finds there has been an underexpenditure, overexpenditure or misexpenditure of moneys disbursed under this Agreement, County shall provide City with written notice thereof, with a detailed spreadsheet providing supporting data of an underexpenditure, overexpenditure or misexpenditure, and County and City shall engage in the process described in the Recovery of Underexpenditure, Overexpenditure or Misexpenditure section below.

- ii. Recovery of Underexpenditure, Overexpenditure or Misexpenditure.

(a) City's Response. City shall have 90 calendar days from the effective date of the notice of underexpenditure, overexpenditure or misexpenditure or from the date of receipt of the notice, whichever is later, to pay County in full or notify County that it wishes to engage in the appeals process set forth in the Appeals Process section below. If City fails to respond within that 90 calendar-day time period, City shall promptly pay the noticed underexpenditure, overexpenditure or misexpenditure.

(b) Appeals Process. Upon receipt of the final notice if City notifies County that it wishes to engage in the Appeals Process, City and County shall engage in non-binding discussions to give the City an opportunity to present reasons why it believes that there was no underexpenditure, overexpenditure or misexpenditure, or that the amount of the underexpenditure, overexpenditure or misexpenditure was different than the amount identified by County, and to give County the opportunity to reconsider its notice. City and County may negotiate an appropriate apportionment of responsibility for the repayment of an underexpenditure, overexpenditure or misexpenditure. At City request, County will meet and negotiate with City in good faith concerning appropriate apportionment of responsibility for repayment of an underexpenditure, overexpenditure or misexpenditure. In determining an appropriate apportionment of responsibility, City and County may consider any relevant factors. An example of a relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure. If County and City reach agreement on the amount owed to County, City shall promptly repay that amount to County by issuing payment to County. If County and City

are unable to agree to whether there has been an underexpenditure, overexpenditure or misexpenditure or as to the amount owed, the parties may agree to consider further appropriate dispute resolution processes, including mediation and arbitration.

3.7 DISPUTE RESOLUTION

The Parties shall attempt to informally resolve any dispute concerning any Party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

3.8 REMEDIES

Subject to the provisions in paragraph 3.6 and 3.7, any Party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The Parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

3.9 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed on or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

3.10 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

3.11 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

Article 4 TERM OF AGREEMENT and SURVIVAL

5.1 This Agreement becomes effective on the last date signed below and shall terminate on December 31, 2020, unless extended by mutual written consent of the Parties.

5.2 City Obligations 1.5, 1.7, 1.10, 1.11 and 1.12 and General Provisions 3.3, 3.6 and 3.8 shall survive termination or expiration of this Agreement.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

WASHINGTON COUNTY, OREGON

DocuSigned by:
Sia Lindstrom
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9/15/2020 | 13:02 PDT

AUTHORIZED SIGNATURE

DATE

Sia Lindstrom

Deputy County Administrator

PRINTED NAME

TITLE

N/A

RECORDING SECRETARY SIGNATURE

DATE

Kevin Moss

PRINTED NAME

CITY OF FOREST GROVE, OREGON

DocuSigned by:
Michael J. VanderZanden
23E1C26EFF73412...

9/14/2020 | 16:36 PDT

AUTHORIZED SIGNATURE #1

DATE

Michael J VanderZanden

City Manager

PRINTED NAME

TITLE

DocuSigned by:
Paul Downey
F48AE1B22635450...

9/10/2020 | 09:46 PDT

AUTHORIZED SIGNATURE #2

DATE

Paul A. Downey

Director of Administrative Services

PRINTED NAME

TITLE

DocuSigned by:
Anna Ruggles
6C687A0B83E14D0...

8/27/2020 | 13:04 PDT

CITY RECORDER SIGNATURE

DATE

Anna Ruggles

PRINTED NAME

APPROVED AS TO FORM:

COUNTY

N/A

COUNTY COUNCIL SIGNATURE

Cortney Duke-Driessen

PRINTED NAME

DATE

ATTACHMENT R
Intergovernmental Agreement ONLY
COVID-19 RESPONSE

Required for all Agreements that are funded in whole or in part by Federal Grant Funds
Clauses required in non-Federal entity's contracts
Source: 2 CFR Part 200, Appendix II

Catalog of Federal Domestic Assistance (CFDA) number(s) of federal funds to be paid through this Agreement: 21.019

Contractor or Sub-Recipient Determination - Washington County determines that:

Recipient is a sub-recipient; OR Recipient is a contractor

AUDIT CLAUSES

Recipient shall comply with the following applicable provisions below.

Audits/Costs

- A. Recipients receiving federal funds in excess of \$750,000 from all sources in the Recipient's fiscal year are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Subrecipient, if subject to this requirement shall at Recipient's own expense submit to County a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to County the annual audit of any subrecipients(s), contractor(s), or subcontractor(s) of Subrecipient responsible for the financial management of funds received under this Agreement.
- B. Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform and audit, costs for performance of that audit shall not be charged to the grant.
- C. Subrecipient shall save, protect and hold harmless County from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the County.

Maintenance of Financial Records

Recipient must maintain auditable financial records per generally accepted accounting principles and in accordance with OAR 309-013-0075 through 0220 and in sufficient detail to permit County or the State to verify how any payments received under this Agreement were expended.

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Access to Records

Recipient agrees to permit a program reviewer or an auditor of the Federal, State, or County government or their agents to have access to records and financial statements as may be necessary. Access to records by the County or State may be with notice or without notice. Any refunds to or disallowances by the Federal Government, the State, or the County resulting from audits shall be the sole responsibility of Recipient for payment to the Federal Government, the State, or the County.

Cost Principles

The parties agree to comply with any applicable cost principles established for determining the allowable costs incurred as set forth in 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), OR circulars superseded by 2 CFR 200 (OMB Circular A-87 (State and Local Governments), OMB Circular A-122 (Nonprofit Organizations), OMB Circular A-21 (Institutions of Higher Learning), 45 CFR Part 74 (Appendix E Hospitals), FAR 48 Subpart 31.2 (For profit Organizations). The parties further agree to comply with, as applicable, the administrative standards for grants set forth in 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

Financial Reports

Recipients determined to be sub-recipients of Federal funds who receive Federal awards during the current contract year from County shall provide County with a Financial Report prepared in accordance with generally accepted accounting principles upon which an independent certified public accountant has expressed an opinion. Such report shall account for funds received during the County's fiscal year, July 1 through June 30, or any part of the County's fiscal year occurring during the term of this Agreement. The report must be submitted within six months of the Recipient's fiscal year end. If the Recipient is unable to meet the deadline, they may request, in writing, an extension of up to three months. Failure to provide County with the annual Financial Report may result in withholding of payments due to the Recipient or termination of this agreement. If the Recipient has a different fiscal year from the County, then the report shall account for funds received during the Recipient's fiscal year.

Expenditure Records

Recipient shall document the expenditure of all funds paid to Recipient under this Agreement. Unless applicable federal law requires Recipient to utilize a different accounting system, Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit County to verify how the funds paid to Recipient under this contract were expended.

Attachment R

I. **Government Entity (Recipient) shall comply with all applicable provisions below.**

- (A) **Administrative, contractual, or legal remedies** are addressed in the Intergovernmental Agreement (Sections 6, 8, 9, and 10) as well as any other applicable provisions in the Agreement and Attachments
- (B) **Termination provisions** are addressed in the Intergovernmental Agreement (Section 6) as well as any other applicable provisions in the Agreement and Attachments
- (C) **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** If required by the federal funding source and if this Agreement is a prime construction contract in excess of \$2,000, Recipient shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5 “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). If this section applies, Recipient must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Recipient must pay wages not less than once a week. If applicable, the County will place a copy of the current prevailing wage determination issued by the Department of Labor in the solicitation. The decision to award a Contract is conditioned upon the acceptance of the wage determination. If applicable, the County will place a copy of the current prevailing wage determination issued by the Department of Labor in the solicitation. If applicable, Recipient must accept the wage determination. If applicable, County will report all suspected or reported violations by Recipient to the Federal awarding agency. If applicable, Recipient must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Government Entities and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each Recipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. If applicable, County will report all suspected or reported violations by Recipient to the Federal awarding agency.
- (E) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the amount of this contract exceeds \$100,000 and involves the employment of mechanics or laborers Recipient shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR

Attachment R

Part 5). Under 40 U.S.C. 3702 of the Act, if applicable, Recipient shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the funding for this Contract meets the definition of “funding agreement” under 37 CFR 401.2(a) and Contract is a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under this Agreement, Recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the federal awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). If the amount of this contract exceeds \$150,000 Recipient shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689).

Government Entity Certification Regarding Debarment, Suspension, Proposed Debarment and other Responsibility Matters. The Government Entity certifies to the best of its knowledge and belief that neither it nor any of its principals:

- a. Are presently debarred, suspended, proposed for debarment, or declared ineligible from submitting bids or proposals by any federal, state or local entity, department or agency;
- b. Have within a three-year period preceding this offer, been convicted or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performance of a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, tax evasion, or receiving stolen property;
- c. Are presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph 15.2 of this certification;
- d. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal, state or local public agency.

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- e. Are on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>
- f. Are out of compliance with the tax laws of Oregon and all tax laws of political subdivisions of the State of Oregon, including, but not limited to, ORS 305.620 and ORS chapters 316, 317 and 318. Washington County may terminate the contract if Government Entity fails to comply with any tax laws during the term of the contract.

(I) 2 CFR Section 200.322 Procurement of recovered materials. Government Entity must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) By signing this Agreement, the Recipient certifies, to the best of the Recipient's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of Recipient, to any person for influencing or attempting to influence an officer or employee of an 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 agreement.
- b. If any funds other than federal 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, the Recipient shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
- c. The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any

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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.

- e. No part of any federal funds paid to Recipient under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
- f. No part of any federal funds paid to Recipient under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive Order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g. The prohibitions in subsections 5 and 6 of this section shall include any activity increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to Recipient under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

II. **FEMA Required Language:**

(A) To be eligible for FEMA assistance under the County's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or construction change must be allowable, allocable, within the scope of the County's grant or cooperative agreement, and for the completion of project scope. All changes to this Agreement to alter the method, price or schedule of work must be approved by written amendment to this Agreement signed by both parties.

(B) Access to Records: In addition to any other term or condition regarding access to records in this Agreement, Government Entity agrees to provide the FEMA administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Government Entity which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcripts. The Government Entity agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as

Attachment R

reasonably needed. The Government Entity agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

- (C) Government Entity shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- (D) Government Entity acknowledges that FEMA financial assistance will be used to fund this Agreement only and can be used for no other purposes. Government Entity will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- (E) The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Government Entity, or any other party pertaining to any matter resulting from this Agreement.
- (F) Government Entity acknowledges that 31 USC Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Government Entity's actions pertaining to this Agreement.

*III. **HIPAA Compliance**.* If the work performed under this Contract is covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Government Entity agrees to perform the work in compliance with HIPAA.

Attachment R

Information Required by 2 CFR 200.331 (a)

1. CFDA Number: **21.019**
 CFDA Name: **CARES Act - Coronavirus Relief Fund**
 Amount: **\$ 10,000,000**
2. Federal Award Identification:
- i. Contractor name (must match DUNS name):
City of Forest Grove
 - ii. Contractor DUNS number: **03-079-6205**
 - iii. Federal Award Identification Number (FAIN): **N/A**
 - iv. Federal Award Date: **March 27, 2020**
 - v. Sub-Award Period of Performance Start/End Dates: From: Aug To: Nov
 - vi. Total Amount of Federal Funds Obligated by this Agreement: **\$ 212,000.00**
 - vii. Total Amount of Federal Award Obligated to the Subrecipient by the pass-through Entity: **\$ 592,827.00**
 - viii. Total Amount of Federal Award Committed to the Subrecipient by the pass-through Entity: **\$ 592,827.00**
 - ix. Federal Award Project Description:
 The Small Business Grant Program is to provide CARES Act- CRF Funds to local cities to fund grants to small businesses effected by COVID-19.
 - x. Name of Federal Awarding Agency, pass-through Entity, and contact information for awarding official of the pass-through entity:
 - a. Name of Federal Awarding Agency: **U. S. Treasury**
 - b. Name of pass-through Entity: **Washington County, OR**
 - c. Contact information for awarding official of the pass-through Entity:
Sia Lindstrom sia_lindstrom@co.washington.or.us
 - xi. Washington County Program Name:
Small Business Grant Program
 - xii. Is Award R&D? **Yes**
 - xiii. Indirect Cost Rate for Federal Award: **0%**



Washington County Subrecipient Pre-award Risk Assessment Form

CFDA No 21.019 Program Title Small Business Grant Program

Attachment R: Pre-Award Risk Assessment Monitoring Plan *This attachment is made a part of this contract. Sub-recipient agrees to perform these additional monitoring items listed below to comply with 2 CFR 200.331 (e).*

(Please be sure to include this page with the contract packet for this subrecipient.)

We have reviewed City of Forest Grove's 18/19 Audit and their grant program plan, application, and process for awarding the funds to beneficiaries, and will be collecting all documents and performing a spot-check audit on documents to ensure compliance with CARES Act- CRF requirements. Any discrepancies will be handled according to the IGA which obligates the funds from Washington County, and any amount for expenditures found to be ineligible shall be refunded to Washington County to be returned to Department of Treasury.

[Click Here to Go Back to Page 1](#)

- (4) Sums sought or awarded for claims of unjust enrichment, money had and received or replevin.
 - (5) Sums due to taxing authorities, insurance programs, or retirement plans as a result of an award of damages or claim settlement.
 - (6) Fines or penalties assessed to the Member for non-payment of taxes, insurance contributions or retirement plan contributions.
- G. **"Employee benefit programs"** shall mean group life insurance, group health insurance, profit sharing plans, pension plan, employee stock subscription plans, workers' compensation, unemployment insurance, social security, disability benefits insurance and travel, savings or vacation plans.
- H. **"Fungus or fungi"** includes but is not limited to any form or type of mold, mushroom or mildew.
- I. **"Hazardous properties"** means radioactive, toxic or explosive properties.
- J. **"Hospital" or "nursing home"** means any facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment including but not limited to providing treatment for 1) acutely ill patients and accident victims, 2) mentally ill patients or 3) patients in special inpatient care facilities. However, in-patient care facilities incidental to correctional facilities shall not be considered a **hospital** or **nursing home**.
- K. **"Member"** means the entity named on the declarations page and its officers, employees and agents including volunteers, authorized to act on behalf of the **named member**, all acting within the scope of their employment or duties whether arising out of a governmental or proprietary function. The term **member** shall also include **additional members** to the extent coverage is afforded under the definition of **additional member**.
- (1) **"Named member"** means the entity named as such on the Declarations page of the coverage agreement,
 - (2) **"Additional member"** means any party whom a public body covered under this coverage agreement has agreed to hold harmless, indemnify or defend pursuant to a contract or other agreement lawfully entered into by such public body. However, in no event shall coverage under this coverage agreement extend to such party for any **claim** arising out of an **occurrence** after the expiration of this coverage agreement or the expiration of the contract or agreement entered into by the public body, whichever shall occur first. Further, in no event shall coverage under this coverage agreement extend to such party for any **claim**, however or whenever asserted, arising out of such party's sole negligence. Except as specified in this paragraph, such party shall have no rights under the **Trust Agreement**, Bylaws or Rules of the **Trust**. The term "additional insured" if used on a certificate of coverage, shall be understood to mean the same as **additional member**.
- L. **"Nuclear Facility"** means:
- (1) Any nuclear reactor;
 - (2) Any equipment or device designed or used for:



For Administrative Use Only – Z99999

Supplier Name: City of Forest Grove

Actual Contract Number (CustomText4): 20-1401

Department (Location): SS - Finance

Contract Type: 8 Agreements

Contract Sub Type (Custom2Code): IGA: Intergovernmental Agreement

Minute Order Date:

Minute Order Number:

Master Contract Number (CustomText1): 20-1401

Bid/RFP # (BidRFP):

BPO Number (Custom1Code): Expense Contract

SHIP TO (LocShipTo): SS - Finance

BILL TO (LocBillTo): SS - Finance

Project Number (CustomText2):

Chargeable Program Number (ChargeProgram):

Contract Admin (Administrator): Will Culver

Certificate Of Completion

Envelope Id: 6F4FC1922FEC4C678EA3005E338CD5B5	Status: Completed
Subject: Please DocuSign: Contract #20-1401: City of Forest Grove	
Source Envelope:	
Document Pages: 21	Signatures: 4
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Kittie Kong
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	155 N. First Ave, Suite 270
	MS28
	Hillsboro, OR 97124-3087
	kittie_kong@co.washington.or.us
	IP Address: 204.147.152.15

Record Tracking

Status: Original	Holder: Kittie Kong	Location: DocuSign
8/26/2020 9:22:12 AM	kittie_kong@co.washington.or.us	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Washington County	Location: DocuSign

Signer Events

Anna Ruggles
 aruggles@forestgrove-or.gov
 Security Level: Email, Account Authentication (None), Access Code

Signature

DocuSigned by:

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 Signature Adoption: Pre-selected Style
 Using IP Address: 208.71.202.193

Timestamp

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 Signed: 8/27/2020 1:04:39 PM

Electronic Record and Signature Disclosure:
 Accepted: 8/27/2020 1:04:32 PM
 ID: b8b96d90-e3de-4f5d-92e7-261290cd6955

Paul Downey
 PDowney@forestgrove-or.gov
 Security Level: Email, Account Authentication (None), Access Code

DocuSigned by:

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 Signature Adoption: Pre-selected Style
 Using IP Address: 208.71.202.193

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 Signed: 9/10/2020 9:46:10 AM

Electronic Record and Signature Disclosure:
 Accepted: 9/10/2020 9:45:49 AM
 ID: dcaccf8e-1ac0-4155-9b4d-a8e40ce45e6d

Michael J. VanderZanden
 jvanderzanden@forestgrove-or.gov
 City Manager
 Security Level: Email, Account Authentication (None), Access Code

DocuSigned by:

 23E1C26EFF73412...
 Signature Adoption: Pre-selected Style
 Using IP Address: 208.71.202.193

Sent: 9/10/2020 9:46:14 AM
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 Signed: 9/14/2020 4:36:11 PM

Electronic Record and Signature Disclosure:
 Accepted: 9/14/2020 12:13:38 PM
 ID: 0cc91a31-9408-4d26-9273-f6acfe650a5b

Sia Lindstrom
 sia_lindstrom@co.washington.or.us
 Deputy County Administrator
 Washington County, Oregon
 Security Level: Email, Account Authentication (None), Access Code

DocuSigned by:

 7AFF957C9D2943D...
 Signature Adoption: Pre-selected Style
 Using IP Address: 204.147.152.15

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 Viewed: 9/15/2020 1:01:46 PM
 Signed: 9/15/2020 1:02:46 PM

Signer Events	Signature	Timestamp
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	9/14/2020 4:36:15 PM
Certified Delivered	Security Checked	9/15/2020 1:01:46 PM
Signing Complete	Security Checked	9/15/2020 1:02:46 PM
Completed	Security Checked	9/15/2020 1:02:46 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Carahsoft OBO SHI OBO Washington County (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Carahsoft OBO SHI OBO Washington County:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: tina_hartmeier@co.washington.or.us

To advise Carahsoft OBO SHI OBO Washington County of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at tina_hartmeier@co.washington.or.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Carahsoft OBO SHI OBO Washington County

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to tina_hartmeier@co.washington.or.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Carahsoft OBO SHI OBO Washington County

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to tina_hartmeier@co.washington.or.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO SHI OBO Washington County as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO SHI OBO Washington County during the course of your relationship with Carahsoft OBO SHI OBO Washington County.



A place where families and businesses thrive.

<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	<u>9. B.</u>
MEETING DATE:	<u>07/13/2020</u>
FINAL ACTION:	<u>RESO 2020-72</u>

CITY COUNCIL STAFF MEMORANDUM

TO: City Council

FROM: Jesse VanderZanden, City Manager

PROJECT TEAM: Jeffrey King, Economic Development Program Manager

MEETING DATE: July 13, 2020

SUBJECT TITLE: Intergovernmental Agreement with Washington County for Establishment of a Covid-19 Small Business Grant Program in Forest Grove

ACTION REQUESTED:

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ordinance	Order	X	Resolution	X	Motion	Informational

X all that apply

BACKGROUND: Due to the Covid-19 pandemic, Oregon’s Governor Brown issued a state of emergency and a number of executive orders that necessitated the closure and curtailment of many businesses. In March, 2020, Washington County received a direct allocation of \$105 million in Federal CARES ACT funds and in June 2020, County Commissioners funded a suite of programs to support small business in response to the impacts of the COVID-19 pandemic.

For one of these programs, the County approved \$10 million to distribute to Cities, via a funding formula, to establish small business grant programs for local businesses. Cities are invited to execute an IGA and prepare an invoice to access these funds. Forest Grove is eligible to receive \$212,000 from the County to design and administer their own small business emergency assistance grant program.

The program would be administered in-house by existing staff. There are two other resolutions related to this program: 1) a resolution establishing the grant program and 2) a budget resolution to accept the funds.

FISCAL IMPACT: Forest Grove would receive \$212,000 from Washington County CARES ACT funds to design and administer a small business grant program.

STAFF RECOMMENDATION: Staff recommends approval of the resolution.

ATTACHMENT(s):

- Resolution approving Intergovernmental Agreement (IGA) between Washington County and the City of Forest Grove
- Intergovernmental Agreement (IGA) between Washington County and the City of Forest Grove for Small Business Grant Program (Exhibit A)

**INTERGOVERNMENTAL AGREEMENT
BETWEEN WASHINGTON COUNTY AND CITY OF FOREST GROVE**
For Small Business Grant Program

This INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered between WASHINGTON COUNTY, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "County", and City of Forest Grove, an Oregon municipal corporation, acting by and through its City Council, hereinafter referred to as “City.” County and City may be jointly referred to herein as the “Parties” or individually as a “Party.”

RECITALS

1. WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and
2. WHEREAS, on March 8, 2020 the Governor of Oregon declared an emergency under ORS 401.165 *et. seq.* due to the public health threat posed by the novel infectious coronavirus disease (COVID-19); and
3. WHEREAS, on March 11, 2020, COVID-19, which spreads person-to-person through coughing, sneezing and close personal contact, was declared a pandemic by the World Health Organization; and
4. WHEREAS on March 13, 2020 the President of the United States declared the COVID-19 outbreak a national emergency; and
5. WHEREAS on March 23, 2020, Oregon Governor Kate Brown issued Executive Order 20-12 (EO 20-12) which, among other things, ordered closure and prohibited operation of a wide range of businesses, restricted the operations of restaurants, bars, brew pubs, wine bars, cafes, food courts and coffee shops, and required social distancing for other retail businesses; and
6. WHEREAS, on March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law and established the \$150 billion Coronavirus Relief Fund (Fund) from which the U.S. Department of the Treasury made payments to eligible units of local government, including the County; and
7. WHEREAS, the County received a payment from the Fund which, subject to the requirements of the CARES Act, can be used to cover expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures or restrictions; and
8. WHEREAS, the City, desires to implement and operate a program, subject to the

requirements of the CARES Act and County criteria, to provide grants to small businesses located within the City's jurisdictional boundaries for necessary expenses due to the COVID-19 public health emergency; and

9. WHEREAS, on June 23, 2020, the Washington County Board of Commissioners approved the distribution of \$10,000,000.00 from the County's allocation of the Fund (Small Business Grant Program fund) for small business grant support in Washington County; and
10. WHEREAS, the County desires that a portion of the \$10,000,000.00 Small Business Grant Program fund be transferred to its cities, recognizing that cities are in a good position to know the particular needs of their business communities; and
11. WHEREAS the City has requested a \$212,000 distribution from the Small Business Grant Program; and
12. WHEREAS, the County desires to provide the City a portion of the Small Business Grant Program funds for the provision of small business grants for expenses made necessary by the COVID-19 public health threat;

AGREEMENT

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals and in consideration of the terms, conditions and covenants set forth below, the Parties agree as follows:

Article 1 CITY OBLIGATIONS

- 1.1 City shall develop and implement a grant program (City Program) to provide grants to assist small business within the City's jurisdictional boundary. The City Program shall:
 - 1.1.1 Comply with the CARES Act and ensure all expenditures covered by grants provided with the Small Business Grant Program funds comply with the CARES Act and:
 - 1.1.1.1 Are necessary expenditures incurred due to the public health emergency with respect to the COVID-19 within the meaning the CARES Act; and
 - 1.1.1.2 Were not accounted for in the City's most recently approved budgets as of March 27, 2020; and
 - 1.1.1.3 Were incurred during the period that begins March 8, 2020 and ends on December 30, 2020.

- 1.1.2 Adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. City will regularly review the guidance established by the U.S. Department of Treasury and will warrant that all small business grant expenditures have met the required guidance.
 - 1.1.3 Develop and impose eligibility criteria that requires a recipient to have a physical presence in Washington County and within the jurisdiction boundaries of the City.
 - 1.1.4 Develop and impose a selection process, consistent with federal law, that ensures business owners from historically disadvantaged populations have equitable access to the City Program and the Small Business Grant Program funds.
- 1.2 City may implement and operate the City Program internally or may contract with a third party to implement and operate the City Program. If the City contracts with a third party to implement and operate the City Program, City use Small Business Grant Program funds to cover a reasonable fee, relative to the total amount of the program, so long as such expense otherwise complies with the CARES Act.
- 1.3 Within 10 business days of execution of this Agreement, City shall provide County with a written plan detailing the implementation and operational specifics of the City Program and demonstrating the City Program complies with this Agreement. The City Program will provide for all Small Business Grant Program funds to be awarded and committed by November 15, 2020. Prior to disbursement of funds, the County will review the City Program plan for compliance and reserves the right to withhold any allocation of Small Business Grant Program funds to the City until the County has approved the City Program.
- 1.5 City may invoice the County for up to \$212,000 of the Small Business Grant Program funds together with submission of the City Program documentation.
- 1.6 No later than September 30, 2020, City shall submit to the County a report which provides how many grants, together with award amounts, have been awarded and committed, the amount of Small Business Grant Program funds that remain uncommitted, and a plan detailing how the remainder of the Small Business Grant Program funds will be allocated by November 15, 2020 according to the City Program.
- 1.7 City agrees that any Small Business Grant Program funds not distributed or committed by November 15, 2020 will be returned to the County no later than November 20, 2020. No invoice from the County shall be required under this term.

- 1.8 Upon conclusion of the City Program, and no later than December 1, 2020, the City shall provide the County with a final report which, at minimum, will provide how many businesses received grants, demographic data on award recipients, information specifying participation by historically disadvantaged business owners, receipts, invoices and other relevant documentation showing compliance with the CARES Act and this Agreement, agency audits, if any, and any other information relevant to the City Program.
- 1.9 The City shall require that all written marketing materials, press releases and reporting regarding the City's Program or use of the City's allocation of the Small Business Grant Program will acknowledge the County as the funder.
- 1.10 The City agrees not to cover its own expenditures that may otherwise be eligible expenditures under the CARES Act with the Small Business Grant Program funds.
- 1.11 City will not use any of the Small Business Grant Program funds provided by the County as a revenue replacement for lower than expected tax or other revenue collections or for any other purpose not allowed by the CARES Act.
- 1.12 City will not use the Small Business Grant Programs funds for small business grant expenditures for which the City has already received any other emergency COVID-19 supplemental funding for the same expenditure.
- 1.13 City will retain, and require any recipient or contractor administering the City's Program to retain, all necessary documentation of all uses of the Small Business Grant Program funds including but not limited to invoices and receipts in a manner consistent with §200.333 *Retention requirements for records of 2 CFR 2 Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Such documentation shall be promptly produced to the County upon request and may be subject to audit by the County or County's authorized agent.
- 1.14 City will comply, and require any recipient or contractor administering the City's Program, to comply with all terms in Attachment R.

Article 2 COUNTY OBLIGATIONS

- 2.1 County shall review City Program plan and provide comments or approval within 5 business days of submission. In the event the County requests changes to the City Program, City will resubmit the City Program plan as soon as practical and County will review and provide comments or approval within 2 business days of resubmittal. Review and resubmittal shall continue until the County approves the City Program, if at all. Nothing in this section requires the County to approve the City Program.

- 2.2 County shall distribute \$212,000.00 from the Small Business Grant Program funds within fourteen days of County approval of the City's Program.

Article 3 GENERAL PROVISIONS

3.1 LAWS OF OREGON

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.

3.2 DEFAULT

Time is of the essence in the performance of the Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

3.3 INDEMNIFICATION

This Agreement is for the benefit of the parties only. City agrees to indemnify and hold harmless the County, and its elected officials, directors, officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). City shall give County prompt written notice of any action or suit filed or any claim made against the County that may result in litigation in any way related to this Agreement. County retains the right, in its discretion, to defend any action with Counsel of this choosing.

3.4 INSURANCE

City shall maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 through 30.274.

3.5 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both Parties. The Parties agree that this Agreement may require modification as additional guidance becomes available.

3.6 DISBURSEMENTS REMAIN SUBJECT TO RECOVERY

All disbursements and payments under this Agreement, remain subject to recovery from City in accordance with the following:

i. Notice of Underexpenditure, Overexpenditure, or Misexpenditure.

If County finds there has been an underexpenditure, overexpenditure or misexpenditure of moneys disbursed under this Agreement, County shall provide City with written notice thereof, with a detailed spreadsheet providing supporting data of an underexpenditure, overexpenditure or misexpenditure, and County and City shall engage in the process described in the Recovery of Underexpenditure, Overexpenditure or Misexpenditure section below.

ii. Recovery of Underexpenditure, Overexpenditure or Misexpenditure.

(a) City's Response. City shall have 90 calendar days from the effective date of the notice of underexpenditure, overexpenditure or misexpenditure or from the date of receipt of the notice, whichever is later, to pay County in full or notify County that it wishes to engage in the appeals process set forth in the Appeals Process section below. If City fails to respond within that 90 calendar-day time period, City shall promptly pay the noticed underexpenditure, overexpenditure or misexpenditure.

(b) Appeals Process. Upon receipt of the final notice, if City notifies County that it wishes to engage in the Appeals Process, City and County shall engage in non-binding discussions to give the City an opportunity to present reasons why it believes that there was no underexpenditure, overexpenditure or misexpenditure, or that the amount of the underexpenditure, overexpenditure or misexpenditure was different than the amount identified by County, and to give County the opportunity to reconsider its notice. City and County may negotiate an appropriate apportionment of responsibility for the repayment of an underexpenditure, overexpenditure or misexpenditure. At City request, County will meet and negotiate with City in good faith concerning appropriate apportionment of responsibility for repayment of an underexpenditure, overexpenditure or misexpenditure. In determining an appropriate apportionment of responsibility, City and County may consider any relevant factors. An example of a relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure. If County and City reach agreement on the amount owed to County, City shall promptly repay that amount to County by issuing payment to County. If County and City are unable to agree to whether there has been an underexpenditure, overexpenditure or misexpenditure or as to the amount owed, the parties

may agree to consider further appropriate dispute resolution processes, including mediation and arbitration.

3.7 DISPUTE RESOLUTION

The Parties shall attempt to informally resolve any dispute concerning any Party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

3.8 REMEDIES

Subject to the provisions in paragraph 3.6 and 3.7, any Party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The Parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

3.9 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed on or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

3.10 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

3.11 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

Article 5 TERM OF AGREEMENT and SURVIVAL

5.1 This Agreement becomes effective on the last date signed below and shall

terminate on December 31, 2020, unless extended by mutual written consent of the Parties.

5.2 City Obligations 1.6, 1.8, 1.11, 1.12 and 1.13 and General Provisions 3.3, 3.6 and 3.8 shall survive termination or expiration of this Agreement.

DATED this _____ day of _____, 2020.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

WASHINGTON COUNTY, OREGON

CITY OF FOREST GROVE OREGON

CAO

CITY MANAGER

DATE

DATE

RECORDING SECRETARY

CITY RECORDER

APPROVED AS TO FORM:

Cortney Duke-Driessen
Sr. Assistant County Counsel

City Attorney

DATE

DATE

ATTACHMENT R
Intergovernmental Agreement ONLY
COVID-19 RESPONSE

Required for all Agreements that are funded in whole or in part by Federal Grant Funds
Clauses required in non-Federal entity's contracts

Source: 2 CFR Part 200, Appendix II

Catalog of Federal Domestic Assistance (CFDA) number(s) of federal funds to be paid through this Agreement:

Contractor or Sub-Recipient Determination - Washington County determines that:

Recipient is a sub-recipient; OR Recipient is a contractor

AUDIT CLAUSES

Recipient shall comply with the following applicable provisions below.

Audits/Costs

- A. Recipients receiving federal funds in excess of \$750,000 from all sources in the Recipient's fiscal year are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Subrecipient, if subject to this requirement shall at Recipient's own expense submit to County a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to County the annual audit of any subrecipients(s), contractor(s), or subcontractor(s) of Subrecipient responsible for the financial management of funds received under this Agreement.

- B. Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform and audit, costs for performance of that audit shall not be charged to the grant.

- C. Subrecipient shall save, protect and hold harmless County from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the County.

Maintenance of Financial Records

Recipient must maintain auditable financial records per generally accepted accounting principles and in accordance with OAR 309-013-0075 through 0220 and in sufficient detail to permit County or the State to verify how any payments received under this Agreement were expended.

Access to Records

Recipient agrees to permit a program reviewer or an auditor of the Federal, State, or County government or their agents to have access to records and financial statements as may be necessary. Access to records by the County or State may be with notice or without notice. Any refunds to or disallowances by the Federal Government, the State, or the County resulting from audits shall be the sole responsibility of Recipient for payment to the Federal Government, the State, or the County.

Cost Principles

The parties agree to comply with any applicable cost principles established for determining the allowable costs incurred as set forth in 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), OR circulars superseded by 2 CFR 200 (OMB Circular A-87 (State and Local Governments), OMB Circular A-122 (Nonprofit Organizations), OMB Circular A-21 (Institutions of Higher Learning), 45 CFR Part 74 (Appendix E Hospitals), FAR 48 Subpart 31.2 (For profit Organizations). The parties further agree to comply with, as applicable, the administrative standards for grants set forth in 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

Financial Reports

Recipients determined to be sub-recipients of Federal funds who receive Federal awards during the current contract year from County shall provide County with a Financial Report prepared in accordance with generally accepted accounting principles upon which an independent certified public accountant has expressed an opinion. Such report shall account for funds received during the County's fiscal year, July 1 through June 30, or any part of the County's fiscal year occurring during the term of this Agreement. The report must be submitted within six months of the Recipient's fiscal year end. If the Recipient is unable to meet the deadline, they may request, in writing, an extension of up to three months. Failure to provide County with the annual Financial Report may result in withholding of payments due to the Recipient or termination of this agreement. If the Recipient has a different fiscal year from the County, then the report shall account for funds received during the Recipient's fiscal year.

Expenditure Records

Recipient shall document the expenditure of all funds paid to Recipient under this Agreement. Unless applicable federal law requires Recipient to utilize a different accounting system, Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit County to verify how the funds paid to Recipient under this contract were expended.

I. **Government Entity (Recipient) shall comply with all applicable provisions below.**

(A) ***Administrative, contractual, or legal remedies*** are addressed in the Intergovernmental Agreement (Sections 3.3, 3.4 and 5.1) as well as any other applicable provisions in the Agreement and Attachments

(B) ***Termination provisions*** are addressed in the Intergovernmental Agreement (Section 6) as well as any other applicable provisions in the Agreement and Attachments

(C) ***Equal Employment Opportunity***. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) ***Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)***. If required by the federal funding source and if this Agreement is a prime construction contract in excess of \$2,000, Recipient shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5 “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). If this section applies, Recipient must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Recipient must pay wages not less than once a week. If applicable, the County will place a copy of the current prevailing wage determination issued by the Department of Labor in the solicitation. The decision to award a Contract is conditioned upon the acceptance of the wage determination. If applicable, the County will place a copy of the current prevailing wage determination issued by the Department of Labor in the solicitation. If applicable, Recipient must accept the wage determination. If applicable, County will report all suspected or reported

violations by Recipient to the Federal awarding agency. If applicable, Recipient must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Government Entitys and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each Recipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. If applicable, County will report all suspected or reported violations by Recipient to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). If the amount of this contract exceeds \$100,000 and involves the employment of mechanics or laborers Recipient shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, if applicable, Recipient shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the funding for this Contract meets the definition of “funding agreement” under 37 CFR 401.2(a) and Contract is a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under this Agreement, Recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the federal awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). If the amount of this contract exceeds \$150,000 Recipient shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689).

Government Entity Certification Regarding Debarment, Suspension, Proposed Debarment and other Responsibility Matters. The Government Entity certifies to the best of its knowledge and belief that neither it nor any of its principals:

- a. Are presently debarred, suspended, proposed for debarment, or declared ineligible from submitting bids or proposals by any federal, state or local entity, department or agency;
- b. Have within a three-year period preceding this offer, been convicted or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performance of a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, tax evasion, or receiving stolen property;
- c. Are presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph 15.2 of this certification;
- d. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal, state or local public agency.
- e. Are on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>
- f. Are out of compliance with the tax laws of Oregon and all tax laws of political subdivisions of the State of Oregon, including, but not limited to, ORS 305.620 and ORS chapters 316, 317 and 318. Washington County may terminate the contract if Government Entity fails to comply with any tax laws during the term of the contract.

(I) 2 CFR Section 200.322 Procurement of recovered materials. Government Entity must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA

guidelines.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) By signing this Agreement, the Recipient certifies, to the best of the Recipient's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of Recipient, to any person for influencing or attempting to influence an officer or employee of an 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 agreement.
- b. If any funds other than federal 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, the Recipient shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. 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.
- e. No part of any federal funds paid to Recipient under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
- f. No part of any federal funds paid to Recipient under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive Order proposed or pending before the United States Congress or any State government,

State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

- g. The prohibitions in subsections 5 and 6 of this section shall include any activity increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

- h. No part of any federal funds paid to Recipient under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

II. **FEMA Required Language:**

- (A) To be eligible for FEMA assistance under the County's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or construction change must be allowable, allocable, within the scope of the County's grant or cooperative agreement, and for the completion of project scope. All changes to this Agreement to alter the method, price or schedule of work must be approved by written amendment to this Agreement signed by both parties.

- (B) Access to Records: In addition to any other term or condition regarding access to records in this Agreement, Government Entity agrees to provide the FEMA administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Government Entity which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcripts. The Government Entity agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Government Entity agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

- (C) Government Entity shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without

specific FEMA pre-approval.

(D) Government Entity acknowledges that FEMA financial assistance will be used to fund this Agreement only and can be used for no other purposes. Government Entity will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(E) The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Government Entity, or any other party pertaining to any matter resulting from this Agreement.

(F) Government Entity acknowledges that 31 USC Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Government Entity's actions pertaining to this Agreement.

*III. **HIPAA Compliance**.* If the work performed under this Contract is covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Government Entity agrees to perform the work in compliance with HIPAA.