



Home of the Tualatin River National Wildlife Refuge

## RESOLUTION 2020-090

### APPROVING INTERGOVERNMENTAL AGREEMENT BETWEEN WASHINGTON COUNTY AND CITY OF SHERWOOD TO FUND IMPLEMENTATION OF CITY OF SHERWOOD EMERGENCY SMALL BUSINESS GRANT PROGRAM DUE TO GOVERNOR'S STATE-WIDE TWO-WEEK FREEZE

**WHEREAS**, on November 17, 2020, Oregon Governor Kate Brown ordered a two-week freeze from November 18, 2020 to December 2, 2020 imposing restrictions on eating and drinking establishments and closing gyms/fitness centers and indoor entertainment businesses; and

**WHEREAS**, the Governor announced that \$55 million in federal CARES Act funds would be allocated to the counties, including Washington County, to assist businesses significantly impacted by the freeze; and

**WHEREAS**, Washington County is allocating \$161,024 of these funds to the City for implementation of a small business grant program; and

**WHEREAS**, there is the possibility of additional funds being provided if funds are available and the City program has greater need than the initial amount; and

**WHEREAS**, the County has approved the City's program; and

**WHEREAS**, the Intergovernmental Agreement establishes various federal, state, and county terms relating to the use of CARES Act funds for this purpose.

#### **NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

**Section 1.** The City Manager is authorized to sign an Intergovernmental Agreement with Washington County in a form substantially similar to Exhibit 1 and to sign an amendment to the IGA in the event additional funds are made available.

**Section 2.** This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 15th day of December 2020.**

  
Keith Mays, Mayor

Attest:

  
Sylvia Murphy, MMC, City Recorder

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN WASHINGTON COUNTY AND CITY OF SHERWOOD  
Emergency Small Business Recovery Grant**

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 Sherwood, 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 23, 2020, in response to the novel infections coronavirus (COVID-19) national emergency and spread of COVID-19, 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
3. WHEREAS, in late April and early May 2020, Oregon Governor Kate Brown began to implement steps to ease restrictions imposed by EO 20-12 and signed Executive Order 20-25, replaced by Executive Order 20-27 (EO 20-27), directing the State to begin a data-driven, phased reopening; and
4. WHEREAS, pursuant to EO 20-27, Washington County entered Phase 1 on June 1, 2020 and has remained in Phase 1 since that time; and
5. WHEREAS, on November 17, 2020, Oregon Governor Kate Brown issued Executive Order 20-65, Temporary Freeze to Address Surge in COVID-19 Cases in Oregon, which, among other things, ordered a two-week “freeze” from November 18 to December 2<sup>nd</sup> and imposed restrictions on restaurants and bars, closed gyms, indoor recreational facilities, museums, indoor entertainment facilities, outdoor recreational facilities, zoos, gardens and entertainment venues; and
6. WHEREAS, on the same day, Governor Brown announced that \$55 million of the State’s allocation of Coronavirus Relief Funds (CRF) authorized by Coronavirus Aid, Relief, and Economic Security Act (CARES Act) would be allocated to the counties to distribute to businesses financially impacted by the freeze, with a priority for the hospitality industry, small businesses and women, Black, Indigenous, People of Color and Tribal-owned

businesses; and

7. WHEREAS, under the Governor’s allocation formula, Washington County received an allocation of \$5,777,452 of Emergency Small Business Recovery Grant Funds which subject to the requirements of the CARES Act and requirements of the State Business Recovery Grant Agreement (“State Agreement”), can be used to cover eligible expenditures, in the form of grants, of small businesses impacted by the freeze; and,
8. WHEREAS, the City, desires to implement and operate a program, subject to the requirements of the CARES Act, the State Agreement and County criteria, to provide economic assistance in the form of grants to small businesses and/or 501(c)(3) non-profit organizations (“non-profits”) located within the City’s jurisdictional boundaries which have been impacted by the COVID-19 public health emergency and freeze; and,
9. WHEREAS, on December 1, 2020 the Washington County Board of Commissioners approved the distribution of the entire allocation of Emergency Small Business Recovery Grant Fund to provide relief funding to the business communities within Washington County impacted by the COVID-19 pandemic and the public health precaution implemented in response; and
10. WHEREAS, the County desires that \$4,270,522 of the Emergency Small Business Recovery Grant Funds 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 portion of the Emergency Small Business Recovery Grant Fund for the purposes provided herein; and
12. WHEREAS, the County desires to provide the City \$161,024 of the Emergency Small Business Recovery Grant Funds as a sub-grantee of County to provide economic assistance in the form of grants to small businesses and non-profits effected by the COVID-19 public health threat and freeze;

### **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 and/or non-profits within the City’s jurisdictional boundary. The City Program shall:

- 1.1.1 Comply with the CARES Act and ensure all expenditures covered by and grants provided by the Emergency Small Business Recovery Grant Fund 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 expenditures and grants have met the required guidance.
- 1.1.3 Comply with the terms of the State Agreement Exhibit A and Exhibit E, incorporated herein by reference, by developing and imposing eligibility criteria including:
  - 1.1.3.1 The business is headquartered in Oregon and has its principal operations in Oregon;
  - 1.1.3.2 If required by Oregon law to be registered with the Oregon Secretary of State to do business in Oregon, the business is so registered; and
  - 1.1.3.3 The business is either for-profit or an entity tax-exempt under section 501(c)(3) of the Internal Revenue Code;
- 1.1.4 Impose criteria that reasonably ensures that ineligible businesses, as defined in the State Agreement, Exhibit A, do not receive Emergency Small Business Recovery Grant Funds.
- 1.1.5 Impose criteria that reasonably ensures that business or non-profits that receive Emergency Small Business Recovery Grant Funds have complied with all State and local laws, rules and regulations including EO 20-12 and EO 20-27.
- 1.1.6 Develop, market, advertise to and impose a selection process, consistent with federal law, that ensures and prioritizes and targets one or more of the following types of businesses, as applicable:

- 1.1.6.1 Business with less than 100 employees;
  - 1.1.6.2 Businesses within rural areas;
  - 1.1.6.3 Businesses that identify as minority-owned, woman-owned, service-disabled veteran-owned, and emerging small business;
  - 1.1.6.4 Non-profits owned by Black, Indigenous, Asian Pacific Islander and all other People of Color and/or women (or eligible nonprofits primarily serving these communities).
- 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 Emergency Small Business Recovery Grant 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. City may also cover internal expenditures related to administering or operating the City Program so long as such expenditures otherwise comply with the CARES Act. The Emergency Small Business Recovery Grant Funds may cover expenditures or expenses related to the operating or administration of the City Program in an amount not to exceed \$7,479. Any expenditures or expenses in excess of this amount shall be covered by City's own funds.
- 1.3 As soon as practicable, 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 Emergency Small Business Recovery Grant Funds to be awarded and obligated by December 30, 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 Emergency Small Business Recovery Grant Funds to the City until the County has approved the City Program.
- 1.4 No later than December 21, 2020, 5:00pm, City shall submit to the County a progress report ("report") which outlines and details an accounting of the amount of the City's portion of Emergency Small Business Recovery Grant Fund that have been committed or expended, and includes a projection of the amount, if any, to be expended by December 30, 2020. The report shall also include the amount, if any, the City Program is oversubscribed, and the amount, if any, the City Program is undersubscribed, underspent, under committed or unallocated. City's report shall provide sufficient detail of the amount, if any, of the City's portion Emergency Small Business Recovery Fund will be unobligated by December 30, 2020.
- 1.4.1 If the City's report indicates an over subscription of City's Program, the City may include in the report a request that additional Emergency Small

Business Recovery Grant Funds be distributed to City. City acknowledges that such additional funds will be allocated in the sole discretion of the County. County shall make any additional allocations and notify city of amount, if any, no later than December 24, 2020 at 5:00 pm.

- 1.4.2 If City's report indicates that the City's portion of the Emergency Small Business Recovery Grant Fund will be underspent or have an amount that is unallocated on December 30, 2020, County in its sole discretion may re-allocate the City's uncommitted or unallocated funds to its own Emergency Small Business Recovery Grant Fund program, or another qualifying sub-grantee of the Emergency Small Business Recovery Grant Fund. City should expect to have any reported amount of underspent, under committed, or unallocated funds to be re-allocated, and City must promptly return unallocated funds to County for redistribution.
- 1.5 No later than January 4, 2021, City shall submit to the County a final report which provides how many grants, together with award amounts, have been awarded and committed, and the amount of Emergency Small Business Recovery Grant Funds that remain uncommitted. The final report shall also include a detailed accounting of any expenditures related to the administration and operation of the program.
- 1.6 City agrees that any Emergency Small Business Recovery Grant Funds not distributed, committed or expended by December 30, 2020 will be returned to the County no later than January 4, 2021. No invoice from the County shall be required under this term.
- 1.7 Upon conclusion of the City Program, and no later than January 4, 2021, the City shall provide the County with a final report which, at minimum, will provide total use of grant funds, total number of applicants and beneficiaries, and for each beneficiary award grant a short description of the beneficiary's business type, industry, number of employees and length of operation history and demographic information reported on the voluntary demographic questionnaire by owners of each beneficiary business. City shall also provide a detailed accounting accompanied by adequate back-up documentation including but not limited to receipts, invoices, timesheets, payroll reports, general ledger reports, contracts, and any 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 Except as otherwise provided herein, the City agrees not to cover its own expenditures that may otherwise be eligible expenditures under the CARES Act with the Emergency Small Business Recovery Grant Funds.
- 1.9 City will not use any of the funds provided by this Agreement as a revenue replacement for lower than expected tax or other revenue collections or for any other purpose not allowed by the CARES Act.

- 1.10 City will not use the Emergency Small Business Recovery Grant Funds for City's grant program expenditures for which the City has already received any other emergency COVID-19 supplemental funding for the same expenditure.
- 1.11 City will retain, and require any recipient or contractor administering the City's Program to retain, all necessary documentation of all uses of the Emergency Small Business Recovery Grant 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.
- 1.12 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 as soon as practical. 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 as soon as practical. 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 the initial allocation of \$160,000 from the Emergency Small Business Recovery Grant Fund within 5 business days of County approval of the City's Program, or execution of this agreement, whichever is later.
- 2.3 County may distribute an additional amount from the Emergency Small Business Recovery Grant Fund to City based on City's December 20, 2020 report and County's determination of the amount of Emergency Small Business Recovery Grant Funds that are available to cover eligible expenses. The decision to distribute additional funds and the amount of the additional distribution shall be in the sole discretion of the County. County shall make payment of additional distribution within 10 business days from the date of notification of additional allocation.

**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 as contemplated by paragraph 3.7 or resolve the differences through appropriate legal action as contemplated by paragraph 3.8.

### 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**

4.1 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.

4.2 City Obligations 1.6, 1.7, 1.9, 1.10, 1.11 and 1.12 and General Provisions 3.3, 3.6, 3.7 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**

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
DATE

**CITY OF SHERWOOD, OREGON**

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
DATE