



August 20, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Local Grant Agreement Amendment #2 between Clackamas County and
 Micro Enterprise Services of Oregon (MESO) for MESO to provide
 a small grants program on behalf of Clackamas County
in an effort to support the local business community impacted by the COVID-19 pandemic

Purpose/Outcomes	Approve a Local Grant Agreement Amendment #2 between Clackamas County and MESO for MESO to provide grants to the Clackamas County small business community. The amendment will add \$155,000 in new funding to the agreement, received as matching funds, from the State of Oregon Small Business Relief Fund. An additional \$15,500 in grant administration fees will also be added to the amendment to pay for MESO's services.
Dollar Amount and Fiscal Impact	Clackamas County Business and Community Services (BCS) will provide an additional \$170,500 to MESO to fund the above listed programs.
Funding Source	\$155,000 is in matching funds from the State of Oregon and \$15,500 is from Clackamas County Lottery dollars currently budgeted in BCS' budget.
Duration	August 20, 2020 through May 31, 2021
Previous Board Action	The original agreement with MESO was signed by the BCC on May 21, 2020, Agenda Item # E.1. Amendment #1 was signed by the BCC on July 16, 2020, Agenda Item # C.4.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1) This grant agreement amendment supports the BCS goal of giving businesses access to innovative tools and programs to help them locate or expand in Clackamas County. Providing grants to businesses impacted by COVID-19 will help them make it through the pandemic so they can reopen under the new normal, and eventually expand when economic times improve. 2) This grant agreement amendment supports County strategic priority of Growing a Vibrant Economy by providing much needed assistance to Clackamas County small businesses so they can remain in business throughout the COVID-19 pandemic.
County Counsel Review	County Counsel Review Date: Est. August 17, 2020 Counsel Initials: ARN
Procurement Review	Was the item processed through procurement? No This agreement is a grant agreement, therefore is not subject to Procurement oversight.
Contact Person	Laura Zentner, BCS Director (503) 742-4351 Sarah Eckman, BCS Deputy Director (503) 742-4303
Contract No.	BCS does not assign a contract number to this agreement.

BACKGROUND:

Business and Community Services has developed a program with MESO to provide economic and social assistance to Clackamas County small businesses affected by COVID-19. This program will help vulnerable businesses by providing much needed cash, as well as technical support to develop new talents and skills that make them more marketable.

Our original agreement with MESO provided \$200,000 in funding for MESO to provide grants to Clackamas County small businesses impacted by the pandemic. Since the original award, an additional \$45,000 in State of Oregon matching funds was awarded to the County to increase the total dollars available for grants. In addition to these funds, MESO received an additional \$175,000 in funding from the State that is specifically for supporting Clackamas County businesses. Funds received under this agreement will increase total grant funding to \$575,000. Collectively, our original \$200,000 in funding has now almost tripled.

We have completed the first round of grants, and once the funding under this agreement is received, will open a second round. It will be publicized widely and with targeted outreach to historically disadvantaged business owners.

RECOMMENDATION:

Staff respectfully recommends the BCC approve the grant agreement amendment #2 with MESO and authorize BCS Director, Laura Zentner, to sign on their behalf.

ATTACHMENT:

Local Grant Agreement Amendment #2 between Clackamas County and Micro Enterprise Services of Oregon (MESO)

Respectfully submitted,

p.p. *Sarah Eckman*

Laura Zentner, CPA
Director, Business & Community Services

Local Grant Agreement Amendment (FY 20-21)
Business & Community Services

Local Grant Agreement Number No. BCS-20-001	Board Order Number: XXXXXX-XX
Department/Division: Business & Community Services	Amendment No. 2
Recipient: Micro Enterprise Services of Oregon	Amendment Requested By: Business & Community Services
Changes: <input type="checkbox"/> Work Plan <input type="checkbox"/> Agreement Term	<input checked="" type="checkbox"/> Agreement Budget <input type="checkbox"/> Other:

This Amendment adds funding to the Local Grant Agreement (No. BCS-20-001) entered into between Clackamas County, by and through its Department of Business and Community Services ("County") and Micro Enterprise Services of Oregon ("Recipient") on or about August 20, 2020 (the "Agreement"). The purpose of this Amendment #2 is to make the following changes to the Agreement:

1. **Section 4, Grant Funds**, is hereby amended to add the following:

County has received an additional \$155,000 under a COVID-19 Emergency Business Assistance Program Forgivable Loan Agreement entered into between the County and the State of Oregon ("Second State Business Assistance Loan"), a copy of which is attached hereto as **Exhibit A** and incorporated by this reference herein. The County will also provide an additional \$15,500 in State Lottery dollars to be used as an administrative fee, resulting in an additional \$170,500 (collectively the "Second State Business Assistance Loan Funds") of funds available for disbursement to Recipient under the Agreement.

Recipient shall distribute the Second State Business Assistance Loan Funds as one-time-only grants to individual businesses affected by the COVID-19 pandemic. In distributing the funds, Recipient shall comply with all terms, conditions, and program eligibility requirements set forth in the Second State Business Assistance Loan as well as the Agreement. In the event of a conflict between the terms and conditions of the Agreement and the Second State Business Assistance Loan, the terms and conditions of the Second State Business Assistance Loan shall control.

Any funds distributed under the State Business Loan or Second State Business Loan must be used solely in a manner that complies with the provisions of the federal CARES Act, and comply with any implementation guidance from the U.S. Department of the Treasury.

2. **Section 5, Disbursements**, is hereby amended to add the following:

Disbursements will be made in lump sum according to the following schedule:

- 5.1.6 \$170,500 for programmatic expenditures allocated as follows:
 - i. Additional \$155,000 for small grants to small businesses pursuant to the terms and conditions of the Second State Business Assistance Loan
 - ii. Additional \$15,500 administrative fee to Recipient for distribution of the Second State Business Assistance Loan Funds.

3. **Exhibit A, Statement of Program Objectives, COVID-19 Emergency Assistance Small Grants Program**, is hereby amended to add the following:

Business Applications and Support Documentation

- Recipient will document the federal assistance amount the grant applicant has received as of the date of application from the Small Business Administration's Paycheck Protection Program (PPP); Economic Injury Disaster Loan Emergency Advance Program (EIDL); or other federal programs for emergency pandemic funding. (Awards must be reduced by the amounts received from those programs.)

Grant Award Amount Reductions

Recipient will reduce any grant award amount by any amount applicant has received from federal CARES Act funds or other federal funds including: Small Business Administration's Paycheck Protection Program (PPP); Economic Injury Disaster Loan Emergency Advance program (EIDL); and other federal programs for emergency pandemic funding.

4. **Exhibit B, Program Budget**, is hereby replaced with the following amended budget:

Category	Amount			
Business Development Services (Technical Assistance) Program	\$ 100,000.00			
Small Grants	\$ 200,000.00			
Small Grants	\$ 45,000.00			
Small Grants	\$ 155,000.00			
Small Grants Administration Fee	\$ 20,000.00			
Small Grants Administration Fee	\$ 4,500.00			
Small Grants Administration Fee	\$ 15,500.00			
Online Tool Setup Fee	\$ 1,500.00			
	\$ 541,500.00			

Except as amended hereby, all other terms and conditions of the Agreement remain in full force and effect.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this amendment to be executed by their duly authorized officers.

Micro Enterprise Services of Oregon
4008 NE MLK Jr. Blvd.
Portland, OR 97212

CLACKAMAS COUNTY
Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer
Commissioner: Ken Humberston
Commissioner: Paul Savas
Commissioner: Martha Schrader

Signing on behalf of the Board:

By: _____
Its: _____

Dated: _____

By: _____
Its: _____

Dated: _____

Exhibit A

COVID-19 Emergency Business Assistance Program
Forgivable Loan Agreement

Fully executed agreement to be attached. Anticipated signature date: August 20, 2020.



August 20, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County, Canby Fire District and the City of Canby for distribution of Community Service Fee (CSF) funds collected from Columbia Distributing - Rural Strategic Investment Zone

Purpose/Outcome	Approval of an Intergovernmental Agreement between Clackamas County, Canby Fire District, and the City of Canby for distribution of Community Service Fee funds from Columbia Distributing pursuant to their Rural Strategic Investment Zone project.
Dollar Amount and Fiscal Impact	See attached distribution schedule for percentages of the fee per taxing district.
Funding Source	Funds paid by Columbia Distributing, then distributed via IGA.
Duration	15 years
Previous Board Action/Review	Policy session held on July 28, 2020.
Strategic Plan Alignment	<p>1. Approval of the CSF distribution aligns with the BCS strategic goal to create living wage jobs as the Rural Strategic Investment Zone was a key factor in Columbia Distributing’s decision to locate in Canby. As stated in their application, this will bring 300 jobs to Canby/Clackamas County at full build out.</p> <p>2. Approval of this agreement aligns with the County’s goal to grow a vibrant economy. The CSF distribution is part of the Rural Strategic Investment Zone application which has been approved by the State.</p>
Counsel Review	<p>1. Date of Counsel review: August 11, 2020</p> <p>2. Initials of County Counsel performing review. (ARN)</p>
Procurement Review	<p>1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/></p> <p>2. If no, provide brief explanation: This item is an IGA.</p>
Contact Person	<p>Sarah Eckman, Deputy Director, Business and Community Services sarahste@clackamas.us</p> <p>Laura Zentner, Director, Business and Community Services lzentner@clackamas.us</p>
Contract No.	BCS does not require a contract number for this IGA.

BACKGROUND:

Columbia Distributing is the first company to utilize the Rural Strategic Investment Zone within Clackamas County. The Rural Strategic Investment Zone is an incentive program where businesses with a project within the zone will pay full property taxes on the first \$25,000,000 investment. Taxes on the property in excess of the \$25,000,000 are abated for 15 years. Businesses pay an annual Community Service Fee (CSF) of the lesser of 25% of business tax savings on investments over \$25 million or \$500,000 per year.

The CSF requirement is intended to mitigate the loss of abated property taxes as well as mitigate the direct impacts of the development on the community that are needed over and above the systems development charges collected. Once those needs are addressed, additional revenues will be used to fund high priority projects or programs of the community.

State statute establishes two ways distribution of the CSF may be determined:

- The distribution of this fee may be determined by execution of an agreement between the County, the City of Canby, and local taxing districts constituting at least 75% of the taxing authority in the location of the project; or
- If an agreement is not reached, the Oregon Business Development Commission will determine the CSF distribution schedule.

Staff has completed the outreach to affected taxing districts and held two meetings to discuss the distribution schedule. During the negotiations, Clackamas County agreed to forego a portion of the County's allocation to the Canby Fire District and the City of Canby, as the location of the project is within the city limits of Canby and is directly served by the City and Canby Fire District. The amount equates to 2.35% of the City of Canby's total share of the CSF and 6.78% of the Canby Fire District's total share. These percentages are already built into the distribution schedule included in the IGA.

The resulting options were presented to the BCC on July 28, 2020 during a policy session. The BCC then directed staff to move forward with the "Preferred Option" which is now reflected in this Intergovernmental Agreement.

It should be noted that some of the percentages of distribution to the City and Fire District as shown in the attached IGA are subject to change. However, the percentages for the County and its special districts will not change prior to finalization.

RECOMMENDATION:

Staff respectfully requests approval of the Intergovernmental Agreement between Clackamas County, Canby Fire District and the City of Canby for the distribution of Community Service Fee funds collected from Columbia Distributing for their participation in the Rural Strategic Investment Zone.

Because there may be minor changes to both the distribution schedule and the percentages following approval by this Board, Staff further requests that Laura Zentner be delegated authority to sign the IGA provided it does not substantively change from the version attached hereto. This authority is necessary given the statutory timeframes involved in getting the agreement in place as well as the scheduling issues arising from having both the City of Canby and the Canby Fire District sign the agreement. By delegating the signing authority for the IGA to accommodate non-substantive changes, we can be sure the agreement is in place by our statutory deadlines even

if the City or the Fire District make minor changes, or if non-County distribution percentages change prior to execution.

ATTACHMENTS:

1. Intergovernmental Agreement
2. Exhibit A: Preferred option distribution schedule worksheet

Respectfully submitted,

p.p. *Sarah Eckman*

Laura Zentner, CPA
Director, Business & Community Services

Intergovernmental Agreement for Rural Strategic Investment Zone (RSIZ) Distribution of Coho Distributing LLC, dba Columbia Distributing, Community Service Fee Under ORS 285C.623(6)

The governments of Clackamas County ("County"), the City of Canby ("City"), the Canby Fire District (the "Fire District") (collectively "the parties"), hereby enter into this Intergovernmental Agreement (the "Agreement") pursuant to Oregon Revised Statutes ("ORS") Chapter 190. The parties have entered into this Agreement to comply with the requirements of ORS 285C.623(6) by setting forth an agreed upon distribution schedule for the annual community service fees ("Fee Payment") collected from a project located in the Clackamas County Rural Strategic Investment Zone ("RSIZ"), as required under ORS 285C.600 to 285C.635 and 307.123.

RECITAL AND FINDINGS:

- WHEREAS: the Oregon Legislature has established the RSIZ to promote industrial competitiveness in Oregon for exceptionally large capital investments.
- WHEREAS: RSIZ provides for local governments to enter into agreements with business firms engaged in a traded-sector industry, in order to attract and retain long-term investment and employment in exchange for limitations on the taxable assessment of property.
- WHEREAS: Coho Distributing, LLC, dba Columbia Distributing (hereinafter " Firm") has entered into an agreement (the "SIZ Agreement") to receive strategic investment program ("SIP") tax treatment under ORS Chapter 285C for its project located within the RSIZ.
- WHEREAS: Pursuant to the SIZ Agreement, the Firm will make an annual Fee Payment to the County, in an amount equal to 25 percent of the property tax savings resulting from the SIP exemption on the Firm's property located in the RSIZ, up to a maximum in any one year of \$500,000. A schedule of anticipated Fee Payments to be received by the County from the Firm are set forth in Exhibit A, attached hereto and incorporated by this reference herein. The parties expressly acknowledge and agree that the schedule set forth in Exhibit A is only an estimate and is used for informational purposes. The actual annual Fee Payment received by the County each year may differ from the estimates set forth in Exhibit A.
- WHEREAS: Pursuant to ORS 285C.623(6), the County shall distribute the collected Fee Payment based on an additional agreement that is entered into among the County, City and local taxing districts listed under ORS 198.010 or 198.180 that constitute at least 75 percent or more of all such districts that are in the code area in which the project is located.

- WHEREAS: The Canby Fire District constitutes 77.5% of the local taxing district authority in the code area in which the Firm’s project is located, as required under ORS 285C.623(6)(a)(B).
- NOW, THEREFORE, in consideration of mutual agreements, covenants and promises contained hereunder, the parties do hereby agree as follows:

1. Distribution and Disbursement

The County shall distribute the annual Fee Payment collected from the Firm under the SIZ agreement according to the following distribution schedule:

City of Canby	30.15%
URA City Canby	19.28%
County Clack City	19.37%
County Extension SVD	0.35%
County Library	2.74%
County Soils Cons	0.35%
URA Clackamas County	0.08%
Vector Control Clack Co	0.25%
<u>Fire 362 Canby</u>	<u>27.44</u>
Total	100%

The County’s obligations hereunder are contingent upon receipt of the annual Fee Payment from the Firm. In no event will County be responsible to any party or local taxing district for annual Fee Payment funds not actually received from the Firm.

2. Use of Portion of Fee Payment for Mitigation

The County’s distribution percentage set forth above is the result of negotiations between the parties whereby the County agreed to reduce its distribution percentage. This is reflected in an increase to the distribution percentages of the Canby Fire District and the City of Canby. In particular, the County has agreed to reduce its distribution percentage to allow the Canby Fire District to increase its percentage by 6.78%, and the City of Canby to increase its percentage by 2.35%. In consideration for the County reducing its distribution percentage, the Canby Fire District and the City of Canby hereby agree that, to the maximum extent permitted by applicable law, the portion of funds received from their respective percentage increases (6.78% and 2.35%) shall be used exclusively to mitigate the loss of abated property taxes well as mitigate the direct impacts of the subject project on the community.

3. Reporting and Administration

- i. With each disbursement, the County shall provide to each party and local taxing district a statement showing the total annual Fee Payment received and the amounts distributed to each party and local taxing district.
- ii. The County shall promptly notify all parties if the Firm fails to make the Fee Payment or is no longer required to submit the Fee Payment.
- iii. Upon request, the Canby Fire District and the City of Canby agree to provide the County a reasonable accounting of how funds from their respective percentage increases (6.78% and 2.35%) were used to mitigate the loss of abated property taxes and/or mitigate the direct impacts

of the subject project on the community.

4. Effective Date/Term of Agreement

- i. This Agreement shall be effective upon the date of its final execution by signature of all parties, or on the date of determination by the Oregon Economic and Community Development Commission that the Firm's project shall receive RSIZ tax treatment, whichever occurs later.
- ii. The Agreement shall expire upon the earlier of the expiration of the 15-year abatement period or termination of the SIZ Agreement.

5. Additional terms and conditions

- i. **Rights and Remedies.** Any party may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the party seeking the termination shall give the breaching party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. Upon termination for breach, each party shall have all rights and remedies available to it at law, in equity, or under this Agreement.
- ii. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the parties of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
- iii. **Compliance with Applicable Law.** All parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- iv. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- v. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- vi. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any party unless in writing and signed by all parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.
- vii. **No Third-Party Beneficiary.** The undersigned parties are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- viii. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- ix. **Survival.** All provisions which by their context are intended to survive shall survive the termination of this Agreement.
- x. **Necessary Acts.** Each party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- xi. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

[Signature Page to Follow]

Pursuant to ORS 285C.623, this Agreement is entered into by and between the County, the City, and the Canby Fire District (a local taxing district that constitutes at least 75% of the property tax authority for tax code 86-002).

ACCEPTING FOR CLACKAMAS COUNTY

By: _____

TITLE: _____

Date _____

ACCEPTING FOR CANBY FIRE DISTRICT

By: _____

TITLE: _____

Date _____

ACCEPTING FOR CITY OF CANBY

By: _____

TITLE: _____

Date _____

**Intergovernmental Agreement for Rural Strategic Investment Zone (RSIZ) Distribution of Coho
Distributing LLC, dba Columbia Distributing, Community Service Fee**

Exhibit A

Tax Code: 086-002	Estimated 1 - Year CSF with EDU/Port Ratioed to District	Estimated 15 - Year CSF with EDU/Port Ratioed to District	% of CSF to be Distributed
CITY CANBY	27,922	519,320	30.15%
URA CITY CANBY	17,858	332,146	19.28%
Canby City Total	45,780	851,465	49.43%
COUNTY CLACK CITY	17,943	333,721	19.37%
COUNTY EXTENSION SVC	320	5,944	0.35%
COUNTY LIBRARY	2,536	47,173	2.74%
COUNTY SOILS CONS	320	5,944	0.35%
URA CLACKAMAS COUNTY	77	1,434	0.08%
VECTOR CONTROL CLACK CO	229	4,259	0.25%
County Total	21,425	398,474	23.13%
FIRE 062 CANBY	25,417	472,734	27.44%
Canby Fire Total	25,417	472,734	27.44%
Total Estimated CSF *	92,622	1,722,673	100.00%

This estimates uses the values and includes the same assumptions as the "Tax Savings Estimate" dated February 13, 2020
*The amount of the CSF is subject to change.



August 20, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of COVID-19 Emergency Business Assistance Program Forgivable Loan Agreement
 to provide matching funds to increase available funding for grants to
the local small business community impacted by the COVID-19 pandemic

Purpose/Outcomes	Approve a COVID-19 Emergency Business Assistance Program Forgivable Loan Agreement between Clackamas County and the State of Oregon to provide Clackamas County with \$155,000 in matching funds to expand the amount of funding available for grants to the local small business community impacted by COVID-19.
Dollar Amount and Fiscal Impact	This agreement provides a mechanism for the State of Oregon to provide \$155,000 in matching funds for the County's Emergency Business Assistance Grant Program.
Funding Source	State of Oregon acting through its Business Development Department
Duration	Agreement is effective upon signature by both parties. The full forgivable loan amount will be dispersed to Clackamas County upon signature by both parties.
Previous Board Action	County Administrator Gary Schmidt approved application for this funding opportunity on May 14, 2020, Agenda Item I.2.
Strategic Plan Alignment	1) This grant agreement supports the BCS goal of giving businesses access to innovative tools and programs to help them locate or expand in Clackamas County. Providing grants to businesses impacted by COVID-19 will help them make it through the pandemic so they can reopen under the new normal, and eventually expand when economic times improve. 2) This grant agreement supports the County strategic priority of Growing a Vibrant Economy by providing much needed assistance to Clackamas County small businesses so they can remain in business throughout the COVID-19 pandemic.
County Counsel Review	County Counsel Review Date: August 11, 2020 Counsel Initials: ARN
Procurement Review	Was the item processed through procurement? No The item is a grant agreement, and is not processed through Procurement.
Contact Person	Laura Zentner, BCS Director (503) 742-4351 Sarah Eckman, BCS Deputy Director (503) 742-4303
Contract No.	BCS does not assign a contract number for this agreement

BACKGROUND:

Business and Community Services has developed a program with local non-profit, Micro Enterprise Services of Oregon (MESO) to provide grants to local small businesses affected by COVID-19. This program helps vulnerable businesses impacted by COVID-19 by providing much needed cash during this very challenging time.

BCS has secured funding for the program in the amount \$575,000. These funds are comprised of:

- \$200,000 in Clackamas County funds (Lottery dollars)
- \$45,000 in State of Oregon Matching Funds (first forgivable loan agreement)

- \$155,000 in State of Oregon Matching Funds (pending signed forgivable loan agreement)
- \$175,000 in State of Oregon Funds to Community Development Financial Institutions (CDFIs) via MESO

The State of Oregon made matching funds available for emergency business assistance grant programs, and BCS was originally awarded \$45,000 to match a portion of the \$200,000 committed from Clackamas County Lottery dollars. This new award provides an additional \$155,000, resulting in all \$200,000 of Clackamas County funds being matched.

Adding this funding to our existing dollars increases the amount of grants we are able to provide to our small businesses (25 employees and under).

RECOMMENDATION:

Staff respectfully recommends the BCC approve the forgivable loan agreement with the State of Oregon and requests authority to sign the agreement be delegated to the BCS Director, Laura Zentner.

ATTACHMENT:

COVID-19 Emergency Business Assistance Program Forgivable Loan Agreement between Clackamas County and the State of Oregon.

Respectfully submitted,

p.p. *Sarah Eckman*

Laura Zentner, CPA
Director, Business & Community Services

**COVID-19 EMERGENCY BUSINESS ASSISTANCE PROGRAM
FORGIVABLE LOAN CONTRACT**

OBDD Contract Number C2020385

This forgivable loan agreement (“Contract”), dated as of the date the Contract is fully executed, is between the State of Oregon, acting through its Business Development Department (“OBDD”) and Clackamas County (“Recipient”) for capitalizing a COVID-19 Emergency Business Assistance Program sponsored by Recipient and described in Exhibit A (“Program”). This Contract becomes effective only when fully signed and approved as required by applicable law. Unless extended or terminated earlier in accordance with its terms, this Contract shall expire 45 days after the Program Completion Deadline. Contract termination shall not extinguish or prejudice OBDD’s right to enforce this Contract with respect to any default by Recipient that has not been cured.

This Contract includes Exhibit A - Program Description and Requirements and Exhibit B - FEDERAL AWARD IDENTIFICATION (Required by 2 CFR 200.331(a)).

OBDD is authorized to enter into Loan agreements and make Loans from the Oregon Business, Innovation and Trade Fund established in ORS 285A.227, including this Contract.

SECTION 1 - FUNDING ASSISTANCE

The OBDD shall provide Recipient, and Recipient shall accept from OBDD, a forgivable loan (the “Loan”) in an aggregate amount not to exceed \$155,000.

SECTION 2 - DISBURSEMENT

- A. Full Disbursement. Upon execution of this Contract and satisfaction of all conditions precedent, OBDD shall disburse the full Loan to Recipient.
- B. Conditions Precedent to Disbursement. The OBDD’s obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its attorneys:
- (1) This Contract duly signed by an authorized officer of Recipient; and
 - (2) Such other certificates, documents, opinions and information as OBDD may reasonably require.
 - (3) Documentation satisfactory to OBDD that, in addition to the Loan, Recipient has available or has obtained binding commitments for all funds necessary to complete the Program, including matching funds in at least a 1:1 ratio.

OBDD has no obligation unless it has appropriations, limitations, allotments or other expenditure authority sufficient to allow OBDD, in the exercise of its reasonable administrative discretion, to disburse funds in accordance with the terms of this Contract, and notwithstanding anything in the Contract, occurrence of such contingency does not constitute a default. Upon occurrence of such contingency, OBDD has no further obligation to disburse funds to Recipient.

SECTION 3 - USE OF LOAN; CARES ACT REQUIREMENTS

The Recipient shall use the Loan only for the activities described in Exhibit A. The Recipient may not use the Loan to cover costs scheduled to be paid for by other financing for the Program from another State of Oregon agency or any third party, or to retire any Recipient debt.

Recipient shall ensure that the project and all expenditures comply with Section 5001 of the federal CARES Act, through the Coronavirus Relief Fund, which is the source of funds for this Loan, and comply with any implementation guidance from the U.S. Department of the Treasury. Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act, requires that Recipient use the Loan to provide small business assistance grants to cover only those costs that (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in its budget most recently approved as of 27 March 2020; and (3) were or are incurred during the period that begins on 1 March 2020, and ends on 30 December 2020.

Recipient must ensure that any distribution or payment of the federal funds paid under this Contract, by means of any grant, subgrant, contract or other agreement between Recipient and another party includes the requirement that such funds must be used solely in a manner that complies with the provisions of the CARES Act.

Any Loan funds disbursed to Recipient that are not used according to this Contract or that remain after the Project is completed, this Contract is terminated or after the Program Completion Deadline, shall be immediately returned to OBDD, unless otherwise directed by OBDD.

SECTION 4 - LOAN REPAYMENT; LOAN FORGIVENESS

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with its terms. The obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Program, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of OBDD to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Program or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against OBDD or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. No Interest. The Loan bears no interest.
- C. Loan Forgiveness. OBDD shall forgive repayment and cancel the Loan by notice to Recipient, as soon as it determines that all of the following conditions are met:
- (1) Recipient has completed the Program no later than the Program Completion Deadline, which date is 45 days after receipt of the Loan proceeds, unless otherwise allowed by OBDD in writing.
 - (2) No Event of Default has occurred and continues.
 - (3) No later than 30 days after the Program Completion Deadline, Recipient submits the reporting required in Exhibit A, in form and substance satisfactory to OBDD.

D. Partial Loan Forgiveness; Repayment of Unforgiven Loan. If Recipient is unable to award grants to businesses (including matching funds) as required by this Contract, equal to the full amount of the Loan, OBDD will forgive that portion of the Loan meeting all the conditions in Subsection C above and notify Recipient in writing. Recipient shall pay all unforgiven Loan principal to OBDD not later than 30 days after receiving notice of partial forgiveness, unless otherwise provided by OBDD in writing.

SECTION 5 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Program related to the ability of Recipient to make all payments and perform all obligations required by this Contract.
- B. Internal Controls; Monitoring of Subrecipients. Recipient must have a system of internal controls in accordance with 2 CFR §200.303, and must implement the requirements of 2 CFR §§ 200.330 through 200.332 regarding Monitoring and Management of any subrecipients.
- C. Federal Audit Requirements. The Loan is federal financial assistance, and the Catalog of Federal Domestic Assistance (“CFDA”) number is 21.019. Recipient is a sub-recipient.
- (1) If Recipient receives federal funds in excess of \$750,000 in the Recipient’s fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to OBDD a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to OBDD the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.
 - (2) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.
 - (3) Recipient shall save, protect and hold harmless OBDD 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 Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.
- D. System for Award Management. Recipient must comply with applicable requirements regarding the federal System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. Recipient also must comply with applicable restrictions on subawards (“subgrants”) to subsequent tier subrecipients.
- E. Employee Whistleblower Protection. Recipient must comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Recipient must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.

- F. Federal Funds. OBDD’s payments to Recipient under this Forgivable Loan will be paid by funds received by OBDD from the United States Federal Government. Recipient, by signing this Contract, certifies neither it nor its employees, contractors, subcontractors or subrecipients who will perform the Project activities are currently employed by an agency or department of the federal government.
- G. Records Retention. Recipient will cooperate with OBDD to provide all necessary financial information and records to comply with CARES Act reporting requirements. Recipient will keep proper books of account and records on all activities associated with the Loan, including, but not limited to grant awards and payments, instruments, agreements and other supporting financial records documenting the use of the Loan, including all grant applications and supplemental documentation provided by business applicants. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles and will retain these books of account and records from the later of the date of this Contract until five years after the Program Completion Deadline or the date that all disputes, if any, arising under this Contract have been resolved.
- H. Inspection. The Recipient shall permit OBDD, and any party designated by OBDD, the Oregon Secretary of State’s Office, the federal government and their duly authorized representatives, at any reasonable time, to inspect and make copies of any accounts, books and records related to the Program. The Recipient shall supply any Program-related information as OBDD may reasonably require.
- I. Notice of Event of Default. The Recipient shall give OBDD prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.
- J. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys’ fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors, that is related to this Program; however, this provision is not to be construed in a way that Recipient’s obligations would constitute debt that violates Section 10, Article XI of the Oregon Constitution.

SECTION 6 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

A. Organization and Authority.

- (1) The Recipient is a county, validly organized and existing under the laws of the State of Oregon.
- (2) The Recipient has all necessary right, power and authority under its organizational documents and applicable Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive funding for the Program.
- (3) This Contract has been authorized by an ordinance, order or resolution of Recipient’s governing body if required by its organizational documents or applicable law.
- (4) This Contract has been duly executed by Recipient, and when executed by OBDD, is legal, valid and binding, and enforceable in accordance with their terms.

- B. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Program, or the ability of Recipient to perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract, including Exhibit A, is true and accurate in all respects.
- C. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Program or the ability of Recipient to perform all obligations required by this Contract.
- D. Governmental Consent. The Recipient has obtained or will obtain all approvals, notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the undertaking and completion of the Program.

SECTION 7 - DEFAULT

Any of the following constitutes an “Event of Default”:

- A. Payment Failure. The Recipient fails to make any Loan payment when due.
- B. Misleading Statement. Any material false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Loan or the Program.
- C. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through B of this section, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 8 - REMEDIES

Upon the occurrence of an Event of Default, OBDD may pursue any remedies available under this Contract, at law or in equity. Such remedies include, but are not limited to, termination of OBDD’s obligations to make the Loan or further disbursements, return of all or a portion of the Loan amount, and declaration of ineligibility for the receipt of future awards from OBDD. OBDD may also recover all or a portion of the outstanding balance due under the Loan from Recipient by deducting the amount from any payment due to Recipient from the State of Oregon under any other contract or agreement, present or future, unless prohibited by state or federal law. If, as a result of an Event of Default, OBDD demands return of all or a portion of the Loan amount, Recipient shall pay the amount upon OBDD’s demand. OBDD reserves the right to turn over any unpaid debt from this Contract to the Oregon Department of Revenue or a collection agency and may publicly report any delinquency or default. The remedies are cumulative and not exclusive of any remedies provided by law.

In the event OBDD defaults on any obligation in this Contract, Recipient’s remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD’s obligations.

SECTION 9 - TERMINATION

In addition to terminating this Contract upon an Event of Default as provided in Section 8, OBDD may terminate this Contract with notice to Recipient under any of the following circumstances:

- A. The Oregon Department of Administrative Services notifies OBDD of an anticipated shortfall in available revenues.
- B. OBDD fails to receive sufficient funding, appropriations or other expenditure authorizations to allow OBDD, in its reasonable discretion, to continue making payments under this Contract.
- C. There is a change in federal or state laws, rules, regulations or guidelines so that the Program funded by this Contract is no longer eligible for funding.

This Contract may be terminated at any time by mutual written consent of the parties.

SECTION 10 - MISCELLANEOUS

- A. No Implied Waiver. No failure or delay on the part of OBDD to exercise any right, power, or privilege under this Contract will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- B. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- C. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or OBDD at the addresses listed in Exhibit A, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

- D. Amendments. This Contract may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.
- E. Severability. If any provision of this Contract will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.
- F. Successors and Assigns. This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights, obligations or any interest without the prior written consent of OBDD.
- G. Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.
- H. Integration. This Contract (including all exhibits, schedules or attachments) constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- I. No Third Party Beneficiaries. OBDD and Recipient are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives or provides, or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- J. Survival. All provisions of this Contract that by their terms are intended to survive shall survive termination of this Contract.
- K. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- L. Attorney Fees. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract will be entitled to recover from the other its reasonable attorney fees and costs and expenses at trial, in a bankruptcy, receivership or similar proceeding, and on appeal. Reasonable attorney fees shall not exceed the rate charged to OBDD by its attorneys.
- M. Public Records. OBDD's obligations under this Contract are subject to the Oregon Public Records Laws.

SIGNATURE PAGE FOLLOWS

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Business Development Department



CLACKAMAS COUNTY

By: _____
Chris Cummings, Interim Director

By: _____
Laura Zenter, Director

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Wendy Johnson per email dated 30 July 2020

Wendy Johnson, Senior Assistant Attorney General

EXHIBIT A - PROGRAM DESCRIPTION AND REQUIREMENTS

OBDD

State of Oregon, acting by and through its
Business Development Department,
775 Summer Street NE Suite 200
Salem OR 97301-1280

Contract Administrator: Matthew Mattia

Telephone: 503-856-2306

Email: matthew.mattia@oregon.gov

Recipient

Clackamas County

150 Beavercreek Road, Room 419
Oregon City OR 97045

Contact: Jon Lagarza, Business and Economic
Development Coordinator

Telephone: 503-742-4366

Email: jlegarza@clackamas.us

Program Requirements

Recipient will operate a COVID-19 Emergency Business Assistance Fund that provides grants to individual businesses affected by the COVID-19 epidemic, as described below. Recipient will provide its own funds for the Program to match the Loan amount, in at least a 1:1 ratio.

Eligible Business Applicants

1. Businesses must be adversely affected economically in either one of the following two categories:
 - Those for-profit and non-profit (limited to 501(c)(3) corporations) businesses that were prohibited from operation as directed by the Governor of Oregon's Executive Order No. 20-12.
 - Those for-profit businesses that can demonstrate a one month decline in sales due to the COVID-19 epidemic of 50% or more in one of the months of March, April, May, June, July or August 2020 as compared against sales in the month of January 2020 or February 2020, or for companies with cyclical or seasonal sales, compared with the comparable month in 2019. Those 501(c)(3) non-profit businesses that can demonstrate a decline in revenue due to the COVID-19 epidemic of 50% or more in one of the months of March, April, May, June, July or August 2020 as compared against revenue in the month of January 2020 or February, or for non-profits with cyclical or seasonal revenues, the comparable month in 2019.
2. Businesses must have 25 or fewer employees.

Ineligible Business Applicants

Ineligible applicants include the following categories of businesses:

1. Passive real estate holding companies and others holding passive investments.
2. Non-profit entities that do not have federal 501(c)(3) status.
3. Businesses that fail to certify they are not delinquent on federal, state or local taxes that were due before the date of application.
4. Businesses that do not certify they are in compliance and will comply with all federal, state and local laws and regulations.
5. Businesses not headquartered and with principal operations in Oregon.
6. Businesses not registered to do business in Oregon (Secretary of State Business Registry verification) if such registration is required.

7. Performing arts venues and cultural or arts organizations that receive funds under the statewide Business and Cultural Support program established by the 14 July 2020 Legislative Emergency Board. (Recipient must notify any applicants that are performing arts venues and cultural organizations about this exclusion. Should such an applicant wish to apply under this program and waive their ability to apply under the Business and Cultural Support program, contact OBDD for direction.)

Program Access

It is intended that these funds are equally accessible to all Oregonians, so Recipient will conduct a robust marketing program that reaches out locally to businesses owned by members of historically disadvantaged population groups (including but not limited to Asian, Black, Hispanic, Native American, and Women Owned Businesses) at least to the extent described in its proposal to OBDD, and Recipient must:

- Utilize program marketing materials and application materials provided by OBDD and made available in languages that are representative of the local population.
- Conduct a stepped marketing program that reaches out and markets to members of historically disadvantaged population groups in advance of marketing to the general public.

Business Applications and Support Documentation

In general, Recipient will, applying its best judgment in individual cases, ensure that businesses:

- Document the federal assistance amount they have received as of the date of application from the Small Business Administration's Paycheck Protection Program (PPP); Economic Injury Disaster Loan Emergency Advance program (EIDL); or other federal programs for emergency pandemic funding. (Awards must be reduced by the amounts received from those programs.)
- Self-certify that their business incurred COVID-pandemic impacts between 1 March 2020 and 30 December 2020 (CARES Act funding restriction).
- Demonstrate:
 - That they were prohibited from operation as directed by Executive Order No. 20-12; or
 - That the for-profit business had a one month decline in revenue decrease of 50% or more due to the COVID-19 pandemic in the month of March, April, May, June, July or August 2020, as compared against the sales or revenues of January or February, or for companies with cyclical or seasonal sales, compared with the comparable month in 2019, or a non-profit business had a revenue decline of 50% or more due to the COVID-19 pandemic in one of the months of March, April, May, June, July or August 2020 as compared against revenue in the month of January 2020 or February 2020, or for non-profits with cyclical or seasonal revenues, the comparable month in 2019.
- Demonstrate they are headquartered and have principal operations in Oregon.
- Self-certify they are not subject to any of the ineligibility criteria.
- Self-certify that the business and its operations are, and will, remain compliant with all local, state and federal laws.
- Provide business, financial and ownership information sufficient to determine and verify eligibility (including whether or not business is owned by a Sole Proprietor).

Recipient will use a standard Grant Application Form for businesses, including a statement that applicant agrees that the State may pursue collection efforts for fraudulent or ineligible grant awards, as supplied by OBDD in multiple languages.

Grant Award Amounts

Awards to eligible businesses will be made as a grant. The amount of the grant will be the greater of two figures, subject to an applicant's ability and choice to provide documentation to support the second figure: the first based on the number of employees before the COVID-19 crisis (as of 29 February 2020); or the second based on the documented amount of fixed operating expenses for the 60 day period of 1 January through 29 February 2020. Regardless of the basis used for the calculation, the applicant must certify that their COVID-pandemic impacts were incurred between 1 March 2020 and 30 December 2020. The eligible award amounts are as follows:

- 0-5 employees
 - \$2,500, or
 - 60-day fixed expenses up to a maximum of \$5,000.
- 6-10 employees
 - \$5,000, or
 - 60-day fixed expenses up to a maximum of \$10,000.
- 11-15 employees
 - \$7,500, or
 - 60-day fixed expenses up to a maximum of \$15,000.
- 16-20 employees
 - \$10,000, or
 - 60-day fixed expenses up to a maximum of \$20,000.
- 20-25 employees
 - \$12,500, or
 - 60-day fixed expenses up to a maximum of \$25,000.

Not less than 50% of all Recipient's awards must be made to Sole Proprietor owners (with or without other employees).

Grant Award Amount Reductions

Recipient will reduce any grant award amount by any amount applicant has received from federal CARES Act funds or other federal funds including: Small Business Administration's Paycheck Protection Program (PPP); Economic Injury Disaster Loan Emergency Advance program (EIDL); and other federal programs for emergency pandemic funding.

Review of Applications

Recipient must confirm that all information and certifications provided by business applicants meet all Program requirements, including but not limited to:

- **Demonstrate:**
 - That the business applicant was prohibited from operation as directed by Executive Order No. 20-12; or
 - That the business applicant had a sales decrease of 50% or more due to the COVID-19 pandemic in the month of March, April, May, June, July or August 2020, as compared against the sales in January or February 2020, or for companies with cyclical or seasonal sales, compared with the comparable month in 2019. For a non-profit business, a 50% or more decline of revenue due to the COVID-19 pandemic in one of the months of March, April, May, June, July or August 2020 as compared against revenue in the month of January 2020 or February 2020, or for non-profits with cyclical or seasonal revenues, the comparable month in 2019.
- Demonstrate that the business applicant is headquartered and with principal operations in Oregon.
- Provide sufficient documentation of employee head count.

Reporting of Awards

To assist in preventing multiple grants to any business, Recipient must send notification of every award to the OBDD Contract Administrator no later than 24 hours after making the award decision, utilizing a Pre-award report form provided by OBDD.

Within 30 days of fully deploying the Loan, or 30 days after the Program Completion Deadline, whichever occurs first, Recipient will deliver a final report on the Program and information on the grant recipients on a form provided by OBDD, which will include but is not limited to:

- Number of applications received
- A listing of the direct costs incurred in the administration of the Program (payroll, marketing, et cetera)
- Number of awards made
 - Awards by #, \$ and % of allocation by voluntary reported demographic information
 - Awards by #, \$, and % of allocation by regions as defined by OBDD (i.e., Central, Coastal, Eastern, Portland, Southern, and Valley)
 - Award by #, \$, and % of allocation by company size / number of employees (0-5, 6-10, et cetera)
 - Award by #, \$ and % of allocation to sole proprietors
 - Total amount of Recipient's matching funds applied to awards made under the Program, by \$ and % match to the Loan.
- Individual business grant recipient data
 - Name of company
 - Employer Identification Number (EIN)
 - Oregon Business Identification Number (BIN)
 - Address of company
 - NAICS industry code

- Amount of award
- Federal award amounts received, listed by program
- Amount of Emergency Small Business Assistance Program award received in earlier rounds
- Legal business entity type
- # of employees as of 29 February 2020
- Reported # of jobs retained due to the award
- For owners of businesses:
 - First and last name
 - Percentage of ownership
 - Demographics as reported in a demographic questionnaire for all owners with 20% or more ownership.
- A certification by Recipient that no Loan proceeds were used to retire any of Recipient's debt.
- Any other additional information if requested by OBDD as necessary for CARES Act compliance.

Tax Responsibility

Recipient is responsible for all federal or state taxes applicable to any portion of the Loan that is forgiven. Recipient is responsible to administer all federal or state tax requirements applicable to grant awards, including delivery of IRS Form 1099-G to grant recipients.

Program Completion Deadline

Recipient must complete grant awards to eligible businesses no later than the Program Completion Deadline, which date is 45 days after receipt of the Loan proceeds, unless otherwise allowed by OBDD in writing. If Recipient is unable to complete grant awards to businesses (including matching funds) in its aggregate Loan amount by the Program Completion Deadline, Recipient shall return all unforgiven Loan principal to OBDD as provided by Section 4 of the Contract.

EXHIBIT B - FEDERAL AWARD IDENTIFICATION (REQUIRED BY 2 CFR 200.331(A))

(i) Recipient Name*: <i>(must match DUNS registration)</i>	CLACKAMAS, COUNTY OF
(ii) Recipient's DUNS number:	09-699-2656
(iii) Federal Award Identification Number (FAIN):	N/A
(iv) Federal award date: <i>(date of award to DAS by federal agency)</i>	27 March 2020
(v) Grant period of performance start and end dates:	Start: 1 March 2020 End: 30 December 2020
(vi) Total amount of federal funds obligated by this Grant:	\$155,000
(vii) **Total amount of federal award committed to Recipient by Agency: <i>(amount of federal funds from this FAIN committed to Recipient)</i>	\$155,000
(viii) Federal award project description:	Coronavirus Relief Fund
(ix) Federal awarding agency:	U.S. Department of the Treasury
(x) Name of pass-through entity:	Oregon Business Development Department
(xi) Contact information for awarding official of pass-through entity:	George Naughton, D.A.S. Chief Financial Officer 155 Cottage Street NE Salem OR 97301 CoronavirusReliefFund@Oregon.gov
(xii) CFDA number, name, and amount:	Number: 21.019 Name: Coronavirus Relief Fund Amount: \$1,388,506,837.10
(xiii) Is award research and development?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xiv) Indirect cost rate:	Not allowed per U.S. Treasury guidance
(xv) Is the 10% de minimis rate being used per §200.414?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

* For the purposes of this Exhibit B, "Subrecipient" refers to Recipient and "pass-through entity" refers to OBDD

** The total amount of federal funds obligated to the Subrecipient by the pass-through entity is the total amount of federal funds obligated to the Subrecipient by the pass-through entity during the current state fiscal year.



August 20, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Loan Agreement, Project Number 17-19-698, Amendment #1 between Oregon Business Development Department (OBDD) and Clackamas County Business and Community Services Economic Development for the Clackamas County Land Bank Authority

Purpose/Outcome	Approve Loan Agreement Amendment #1 between the Oregon Business Development Department (“OBDD”) and Business Community Services Economic Development division. The amendment will change the project completion deadline from January 31, 2022 to January 31, 2024. Amendment will also defer interest from accruing until January 1, 2022. The amendment provides other date adjustments to align with the extension of the start date, and project completion date.
Dollar Amount and Fiscal Impact	Clackamas County originally set aside \$375,000 in match for this program, which will be funded through Lottery dollars (via the Business and Community Services Economic Opportunity program) and contributions from other partners.
Funding Source	Lottery Funds
Duration	Upon execution through May 31, 2024. Extension of two years due to COVID-19 impact.
Previous Board Action/Review	<ul style="list-style-type: none"> • BCC Approval September 27, 2018 Feasibility Study Business Plan • Policy Session April 9th, 2019 approval of CCLBA business plan • October 24th, 2019 Approval of forgivable loan for funding to support the Startup of the Clackamas County Land Bank Authority
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Approving this amendment aligns with the Business and Community Services goal of establishing the Clackamas County Land Bank Authority, and the goal of making three sites available by the Clackamas County Land Bank Authority for private use and investment by providing funding to start the Clackamas County Land Bank Authority. 2. Approving this amendment supports the Board of County Commissioners goal of Growing a Vibrant Economy by supporting the establishment of the Clackamas County Land Bank Authority, a tool that will result in providing more employment land and properties to support a thriving community.
Counsel Review	<ol style="list-style-type: none"> 1. Date of Counsel review: July 27th, 2020 2. NB

Procurement Review	Was the item processed through Procurement? No If no, provide brief explanation: Item is only a contract time amendment and deferral of interest accrual.
Contact Person	Laura Zentner, Business and Community Services Director lzentner@clackamas.us Sarah Eckman, Business and Community Services Deputy Director sarahste@clackamas.us
Contract No.	BCS does not assign a contract number for this item

BACKGROUND:

Like many other local governments throughout the State of Oregon, Clackamas County faces financial and legal hurdles in cleaning up and repurposing so-called “brownfield” sites, properties where business expansion or redevelopment is complicated by actual or perceived environmental contamination. At the same time, the County is challenged by a lack of employment lands, and a critical shortage of affordable housing.

In 2015, recognizing that many local governments faced similar challenges, the Oregon Legislature passed HB 2734, which allows for the creation of Land Bank Authorities to assist local governments in remediating, redeveloping, and revitalizing brownfields without the liabilities traditionally associated with these properties. Under the law, a Land Bank Authority can acquire a brownfield site, remediate contamination, and facilitate repurposing and redevelopment of the property. Critically, a Land Bank Authority enjoys significant protection from liability for pre-existing contamination. Once rehabilitated, these sites can serve as employment lands to meet the needs of expanding or relocating businesses, as sites for new affordable housing developments, or can be turned into new community parks or open spaces.

In April 2019, the Board approved a Business Plan proposed by Business and Community Services (BCS) for the formation and implementation of a Clackamas County Land Bank Authority (CCLBA). One component of the Business Plan was securing adequate funding for CCLBA start-up and initial operations. Upon the Board’s approval of the Business Plan, BCS Economic Development worked with the State of Oregon to secure \$300,000 in forgivable loan funding from the State of Oregon’s Business Development Department to support development of a county brownfield land bank authority.

Due to the COVID-19 pandemic, staff has pivoted to launch the Emergency Business Grant Assistance program and requested and received approval from the Oregon Business Development Department to move the start date back for this important forgivable loan agreement.

RECOMMENDATION:

Staff recommends Board approval of the Loan Amendment between Clackamas County and State of Oregon, Business Development Department for the Clackamas County Land Bank Authority (Project Number 17-19-698) and further authorizes the Director or Deputy Director of

Business and Community Services to sign the Loan Agreement and related attachments on behalf of the County.

ATTACHMENT:

Strategic Reserve Fund Loan Amendment #1 for the Clackamas County Land Bank Authority
(Project Number 17-19-698)

Respectfully Submitted,

p.p. *Sarah Eckman*

Laura Zentner, CPA
Director, Business & Community Services

Amendment Number 1

Project Name: Clackamas County Land Bank Authority

This amendment is made and entered into by and between the State of Oregon, acting by and through its Oregon Business Development Department (“OBDD”), and Clackamas County Economic Development (“Recipient”), and amends the Loan Agreement, Project Number 17-19-698, dated 31 Oct 2019 (“Contract”) for the above-named Project. Capitalized terms not defined in this amendment have the meanings assigned to them by the Contract.

Recital: The purpose of this amendment is to extend the time to complete the project due to COVID-19 delay.

The parties agree as follows:

1. Amend the following Key Term in Section 1 of the Contract as follows (deletion in ~~striketrough~~; addition in double underline):

Project Completion Deadline: 31 January ~~2022~~ 2024.

2. Amend Section 5 of the Contract as follows (deletion in ~~striketrough~~; addition in double underline):

B. Interest. Interest accrues beginning 1 January 2022 ~~on each disbursement from the date of disbursement until the Loan is fully paid~~ at the rate of 5% per annum. Interest is computed by counting the actual days occurring in a 365-day year.

C. Maturity Date. Unless completely forgiven, Recipient will pay to OBDD the outstanding principal of the Loan and all accrued interest on 31 May ~~2022~~ 2024.

3. Amend Exhibit A of the Contract as follows (deletion in ~~striketrough~~; addition in double underline):

3) Provide support to other counties and municipalities to establish their own land bank authorities. CCLBA staff will help counties and cities with business plans, agenda items, resolutions, IGAs, et cetera. CCLBA staff will be available for at least 120 hours per year, starting on or before 1 January ~~2020~~ 2022 and ending 31 December ~~2024~~ 2023, to assist other municipalities in establishing land bank authorities. CCLBA will provide municipalities with technical assistance on business plans, resolutions, and IGAs through in-person meetings, conference calls, and/or webinars.

5) Produce an annual report not later than 31 January ~~2024~~ 2023 for the first year, and 31 January ~~2022~~ 2024 for the second year, that: provides an overview of support and technical assistance to municipalities, details the number of housing and jobs created by participant companies and partner companies, and provide an overview of the collaboration among Recipient, CCLBA, other municipalities, and other land bank authorities.

Special Conditions:

Recipient and CCLBA shall give Business Oregon irrevocable, worldwide, royalty-free, sub-licensable licenses to all materials to be created as described in the Project Description above, including but not limited to the Guidebook, road map, and all documents in the document library.

Project must begin no later than 1 January 2022.

SIGNATURE PAGE FOLLOWS

OBDD will have no obligation under this amendment, unless within 60 days after receipt, the Recipient delivers to OBDD the following items, each in form and substance satisfactory to OBDD and its Counsel:

- (i) this amendment duly executed by an authorized officer of the Recipient; and
- (ii) such other certificates, documents, opinions and information as OBDD may reasonably require.

Except as specifically provided above, this amendment does not modify the Contract, and the Contract shall remain in full force and effect during the term thereof. This amendment is effective on the date it is fully executed and approved as required by applicable law.



STATE OF OREGON
acting by and through its
Oregon Business Development Department



CLACKAMAS COUNTY ECONOMIC DEVELOPMENT

By: _____
Edward Tabor, Manager
Programs & Incentives

By: _____
Laura Zentner, Director
Business and Community Services

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Not required by OAR 137-045-0050