



December 17, 2020

Board of County Commissioners  
 Clackamas County

Members of the Board:

Approval of Local Grant Agreement Amendment #3 between Clackamas County and Micro Enterprise Services of Oregon (MESO) for MESO to provide a small grants program on behalf of Clackamas County in support of the local business community impacted by the COVID-19 pandemic

<b>Purpose/Outcomes</b>	Approve a Local Grant Agreement Amendment #3 between Clackamas County and MESO for MESO to provide grants to the Clackamas County small business community. The amendment adds \$122,100 in CARES funding to the agreement to fund additional grants. In addition, the agreement adds \$13,125 in lottery dollars as a 7.5% administrative fee to MESO for their work for facilitation of \$175,000 of Clackamas County grants awarded through dollars MESO received from the State. Finally, the amendment adds language to pass through CARES Act requirements to MESO.
<b>Dollar Amount and Fiscal Impact</b>	\$122,100 (\$111,000 in additional grants and \$11,100 in administrative fees) in CARES Act funds, plus \$13,125 administrative fee in Lottery dollars to pay for the facilitation of \$175,000 of Clackamas County grants awarded through dollars MESO received from the State.
<b>Funding Source</b>	\$122,100 – CARES Act \$13,125 – Lottery dollars
<b>Duration</b>	This Agreement becomes effective on execution. Eligible <b>non-federal</b> expenses for this Agreement may be charged during the period beginning <b>May 21, 2020 and expiring May 31, 2021</b> , a total of twelve (12) months and ten (10) days. Eligible <b>federal</b> expenses for this Agreement may be charged during the period beginning <b>May 21, 2020 and expiring December 30, 2020</b> , a total of seven (7) months and nine (9) days.
<b>Previous Board Action</b>	<ul style="list-style-type: none"> <li>The original agreement with MESO was signed by the BCC on May 21, 2020, Agenda Item # E.1.</li> <li>Amendment #1 was signed by the BCC on July 16, 2020, Agenda Item # C.4.</li> <li>Amendment #2 was signed by BCS Director Laura Zentner on behalf of the BCC on August 26, 2020. Board agenda date August 20, 2020, Agenda Item # D.1.</li> </ul>
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>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 operate/reopen under the new normal, and eventually expand when economic times improve.</li> <li>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.</li> </ol>
<b>County Counsel Review</b>	County Counsel Review Date: December 9, 2020 Counsel Initials: ARN
<b>Procurement Review</b>	Was the item processed through procurement? No

	This agreement is a grant agreement, therefore is not subject to Procurement oversight.
<b>Contact Person</b>	Laura Zentner, BCS Director (503) 742-4351 Sarah Eckman, BCS Deputy Director (503) 742-4303
<b>Contract No.</b>	BCS-20-038

**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 \$200,000 in State of Oregon matching funds was received by the County and passed on to MESO to increase the total dollars available for grants. The original agreement and subsequent amendments also included \$53,125 in administrative fees to MESO, \$100,000 for MESO to provide technical services to Clackamas County businesses, and \$1,500 for online tool setup. The addition of \$122,100 in CARES Act dollars funds even more grants, bringing our total and program investment with MESO to \$676,725.

In addition to these funds, MESO received an additional \$175,000 in funding directly from the State that was specifically for supporting Clackamas County businesses. They disbursed these funds to businesses alongside our dollars in the first grant round. This brings the total amount facilitated through MESO to \$851,725.

We have completed two rounds of grants. The funding received from this grant amendment will allow us to fund grant applicants who were eligible in the second round, but were not funded due to lack of dollars. We have focused our marketing for all our grants to historically disadvantaged business owners.

**RECOMMENDATION:**

Staff respectfully recommends the BCC approve the grant agreement amendment #3 with MESO and authorize BCS Director, Laura Zentner, to sign on their behalf.

**ATTACHMENT:**

Local Grant Agreement Amendment #3 between Clackamas County and Micro Enterprise Services of Oregon (MESO)

Respectfully submitted,



Laura Zentner, CPA  
Director, Business & Community Services



December 17, 2020

Board of County Commissioners  
 Clackamas County

Members of the Board:

Approval of State of Oregon, Department of Administrative Services, Grant Agreement with Clackamas County to provide CARES Act funding for grants to the local small business community impacted by the COVID-19 pandemic

<b>Purpose/Outcomes</b>	Approve a State of Oregon, Department of Administrative Services, Grant Agreement with Clackamas County to provide CARES Act funding for grants to the local small business community impacted by the COVID-19 pandemic.
<b>Dollar Amount and Fiscal Impact</b>	\$4,168,536 in CARES Act funding to be distributed to the Clackamas County small business community via the County's Emergency Business Assistance Grant Program.
<b>Funding Source</b>	CARES Act, via State of Oregon acting through its Department of Administrative Services.
<b>Duration</b>	Agreement is effective upon signature by both parties and will expire on December 30, 2020.
<b>Previous Board Action</b>	EOC Commander Nancy Bush briefed the BCC on this agreement during the BCC Business Meeting on December 10, 2020. The agreement was received by the County on December 9, 2020 and is being expedited to meet the extremely short timelines.
<b>Strategic Plan Alignment</b>	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 operate/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.
<b>County Counsel Review</b>	County Counsel Review Date: December 10, 2020 Counsel Initials: ARN
<b>Procurement Review</b>	Was the item processed through procurement? No The item is a grant agreement, and is not processed through Procurement.
<b>Contact Person</b>	Laura Zentner, BCS Director (503) 742-4351 Sarah Eckman, BCS Deputy Director (503) 894-3135
<b>Contract No.</b>	Grant No. 2503

**BACKGROUND:**

Governor Kate Brown recently announced that the state would commit \$55 million in financial assistance to support Oregon businesses who have been impacted by COVID-19. These funds have been allocated to counties to distribute to businesses who have been financially impacted. Counties are encouraged to prioritize businesses within the hospitality industry, businesses impacted by the freeze, small businesses, and women, Black, Indigenous, People of Color, and Tribal-owned businesses.

Each county received a base of \$500,000 plus a per capita allocation of the remainder of the funds. Clackamas County's allocation is \$4,168,536. All counties will receive the funds as a direct deposit. It is not a reimbursement-based process. BCS will facilitate the funding receipt and distribution process. Distribution of funds is at each county's discretion. Counties decide eligibility criteria (outside of the minimum eligibility listed below) and how businesses apply to receive funds, as well as how to communicate the application process to businesses.

Counties are asked to make a good faith effort to prioritize the hospitality industry, businesses impacted by the freeze, small businesses, and women, Black, Indigenous, People of Color, and Tribal-owned businesses.

The State has provided the following minimum eligibility requirements; only one application may be made per business:

1. The business is headquartered in Oregon and has its principal operations in Oregon.
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.
3. The business is either for-profit or an entity tax-exempt under section 501(c)(3) of the Internal Revenue Code.
4. The business was adversely affected in either one of the following two ways:
  - a. The business was prohibited from operating as directed by Executive Orders 20-12 or 20-65.
  - b. The business can demonstrate a one-month decline in sales of 25% or more, incurred by the COVID-19 pandemic, between March 1, 2020 and November 30, 2020, as compared against the same period of time in 2019.

Business and Community Services has developed a grant distribution 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 will enter into an agreement with MESO for them to provide the grant distribution process for the State of Oregon CARES Act funds. Due to the extremely short timeframe for this program (awards must be committed by December 30, 2020), and the high volume of work for the County and MESO, a simplified grant program has been designed to fully utilize all funds provided by the State by providing grants to struggling small businesses.

The program will distribute funds in two ways:

- 1) Fund applicants who recently applied for grants under the Clackamas County \$1 million grant funding stream, but were not funded due to lack of funds. These applicants represent small businesses across Clackamas County and the program was marketed to small businesses, and women, Black, Indigenous, People of Color, and Tribal-owned businesses. The program has more than \$4 million in applications currently unfunded.
- 1) Open a simplified application for hospitality industry businesses, and possibly others prohibited from operating as directed by Executive Orders 20-12 or 20-65, that will provide \$2,500 - \$3,000 grants to applicants meeting a small set of criteria.

Accepting this CARES Act funding will allow Clackamas County to provide a substantial amount of money to the local small business community during challenging times and the holiday season.

**RECOMMENDATION:**

Staff respectfully recommends the BCC approve the State of Oregon, Department of Administrative Services, Grant Agreement with Clackamas County to provides CARES Act funding for grants to the local small business community impacted by the COVID-19 pandemic.

**ATTACHMENT:**

State of Oregon, Department of Administrative Services, Grant Agreement with Clackamas County

Respectfully submitted,

*Laura Zentner*

Laura Zentner, CPA  
Director, Business & Community Services

# STATE OF OREGON GRANT AGREEMENT

Grant No. 2503

This Grant Agreement (“Grant”) is between the State of Oregon acting by and through its Department of Administrative Services (“Agency”) and Clackamas County (“Grantee”), each a “Party” and, together, the “Parties”.

## SECTION 1: AUTHORITY

Pursuant to funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and as allocated to Agency by the Oregon Emergency Board, Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Grant.

## SECTION 2: PURPOSE

Section 5001 of the CARES Act provides funds to state, local and tribal governments through the Coronavirus Relief Fund to be used for expenditures incurred due to COVID-19 during the period of March 1, 2020 through December 30, 2020 (the “Performance Period”). This Grant governs the disbursement of funds from the Coronavirus Relief Fund to Grantee for the Performance Period to reimburse the costs of the activities described in Exhibit A.

## SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Grant, and all necessary approvals have been obtained (“Executed Date”), this Grant is effective and has a Grant funding start date as of March 1, 2020 (“Effective Date”), and, unless extended or terminated earlier in accordance with its terms, will expire on December 30, 2020.

## SECTION 4: GRANT MANAGERS

### 4.1 Agency’s Grant Manager is:

Gerold Floyd  
Department of Administrative Services  
Attention: Coronavirus Relief Fund  
155 Cottage Street NE, Salem, OR 97301  
Phone: 503-378-2709  
Email: CoronavirusReliefFund@Oregon.gov

4.2 Grantee’s Grant Manager is:

Name: Michael Morasko  
Address: 2051 Kaen Rd, Oregon City, OR 97045  
Phone: 503-742-5435  
Email: mmorasko@clackamas.us

4.3 A Party may designate a new Grant Manager by written notice to the other Party.

**SECTION 5: PROJECT ACTIVITIES**

To receive funds under this Grant, Grantee must perform the project activities set forth in Exhibit A (the “Project”), attached hereto and incorporated in this Grant by this reference, during the Performance Period.

**SECTION 6: GRANT FUNDS**

In accordance with the terms and conditions of this Grant, Agency will provide Grantee up to an amount not to exceed \$4,168,536.00 (the “Grant Funds”) for eligible Project costs incurred during the Performance Period. Agency will pay the Grant Funds from monies available through the Coronavirus Relief Fund (“Funding Source”).

**SECTION 7: DISBURSEMENT GENERALLY**

- 7.1 **Disbursement.** Agency will disburse Grant Funds to Grantee in a single disbursement within five business days of the Executed Date.
- 7.2 **Conditions Precedent to Disbursement.** Agency’s obligation to disburse Grant Funds to Grantee under this Grant is subject to satisfaction of each of the following conditions precedent:
  - 7.2.1 Agency has received sufficient funding, appropriations, expenditure limitation, allotments or other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funding Source;
  - 7.2.2 No default as described in Section 13 has occurred; and
  - 7.2.3 Grantee’s representations and warranties set forth in Section 8 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.
- 7.3 **No Duplicate Payment.** Grantee may use other funds in addition to the Grant Funds to complete the Project; provided, however, funds received pursuant to this Grant are not used for expenditures for which a local government entity has received any other supplemental funding (whether state,

federal or private in nature) for that same expense unless otherwise authorized by Agency in writing.

## **SECTION 8: REPRESENTATIONS AND WARRANTIES**

**8.1 Organization/Authority.** Grantee represents and warrants to Agency that:

**8.1.1** Grantee is a local government duly organized and validly existing;

**8.1.2** Grantee has all necessary rights, powers and authority under any organizational documents and under Oregon Law to (i) execute this Grant, (ii) incur and perform its obligations under this Grant, and (iii) receive financing, including the Grant Funds, for the Project;

**8.1.3** This Grant has been duly executed by Grantee and when executed by Agency, constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;

**8.1.4** If applicable and necessary, the execution and delivery of this Grant by Grantee has been authorized by an ordinance, order or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and

**8.1.5** There is no proceeding pending or threatened against Grantee before any court or governmental authority that if adversely determined would materially adversely affect the Project or the ability of Grantee to carry out the Project.

**8.2 False Claims Act.** Grantee acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) made by (or caused by) Grantee that pertains to this Grant or to the Project. Grantee certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Grantee further acknowledges in addition to the remedies under Section 14, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Grantee.

**8.3 No limitation.** The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Grantee.

## **SECTION 9: INDEMNITY/LIABILITY**

**9.1 Indemnity.** Subject to the limitations of Article XI, § 10, of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Grantee must defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorneys’ fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subgrantees, contractors, subcontractors, or agents under this Grant (each of the foregoing individually or collectively a “Claim” for purposes of this Section).

- 9.2 Defense.** Grantee may have control of the defense and settlement of any Claim subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the Claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any Claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event the State of Oregon determines Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon’s interests, or an important governmental principle is at issue and the State of Oregon desires to assume its own defense. Grantee may not use any Grant Funds to reimburse itself for the defense of or settlement of any Claim.
- 9.3 Limitation.** Except as provided in this Section, neither Party will be liable for incidental, consequential, or other direct damages arising out of or related to this Grant, regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither Party will be liable for any damages of any sort arising solely from the termination of this Grant in accordance with its terms.

## **SECTION 10: INSURANCE**

As a “public body” as defined in ORS 30.260, Grantee agrees to insure any obligations that may arise for Grantee under this Grant, including any indemnity obligations, through (i) the purchase of insurance as indicated in Exhibit B; or (ii) the use of self-insurance or assessments paid under ORS 30.282 that is substantially similar to the types and amounts of insurance coverage indicated on Exhibit B; or (iii) a combination of any or all of the foregoing.

## **SECTION 11: GOVERNING LAW, JURISDICTION**

This Grant is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively “Claim”) between Agency or any other agency or department of the State of Oregon, or both, and Grantee that arises from or relates to this Grant must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may this Section be construed as a waiver by the State of Oregon 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, to or from any Claim or from the jurisdiction of any court. GRANTEE, BY EXECUTION OF THIS GRANT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS.



## SECTION 12: ALTERNATIVE DISPUTE RESOLUTION

The Parties should attempt in good faith to resolve any dispute arising out of this Grant. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Grant. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each Party will bear its own costs incurred for any mediation or non-binding arbitration.

## SECTION 13: DEFAULT

**13.1 Grantee.** Grantee will be in default under this Grant upon the occurrence of any of the following events:

**13.1.1** Grantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe or discharge any of its covenants, agreements or obligations under this Grant;

**13.1.2** Any representation, warranty or statement made by Grantee in this Grant or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made; or

**13.1.3** A petition, proceeding or case is filed by or against Grantee under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, winding-up or adjustment of debts; in the case of a petition filed against Grantee, Grantee acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; or Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.

**13.2 Agency.** Agency will be in default under this Grant if, after 15 days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Grant; provided, however, Agency will not be in default if Agency fails to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from, the Funding Source.

## SECTION 14: REMEDIES

**14.1 Agency Remedies.** In the event Grantee is in default under Section 13.1, Agency may, at its option, pursue any or all of the remedies available to it under this Grant and at law or in equity, including, but not limited to: (i) termination of this Grant under Section 16.2, (ii) reducing or withholding payment for Project activities or materials that are deficient or Grantee has failed to complete by any scheduled deadlines, (iii) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Grant, (iv) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (v) exercise of its right of recovery of overpayments under Section 15 of this Grant or setoff,

or both, or (vi) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

- 14.2 Grantee Remedies.** In the event Agency is in default under Section 13.2 and whether or not Grantee elects to terminate this Grant, Grantee’s sole monetary remedy will be, within any limits set forth in this Grant, reimbursement of Project activities completed and accepted by Agency and authorized expenses incurred, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Grant or for anticipated profits.

## **SECTION 15: WITHHOLDING FUNDS, RECOVERY**

Agency may withhold from disbursements of Grant Funds due to Grantee, or Grantee must return to Agency within 30 days of Agency’s written demand:

- 15.1** Any Grant Funds paid to Grantee under this Grant, or payments made under any other agreement between Agency and Grantee, that exceed the amount to which Grantee is entitled;
- 15.2** Any Grant Funds received by Grantee that remain unexpended or contractually committed for payment of the Project at the end of the Performance Period;
- 15.3** Any Grant Funds determined by Agency or the U.S. Department of the Treasury to be spent for purposes other than allowable Project activities; or
- 15.4** Any Grant Funds requested by Grantee as payment for deficient activities or materials.

## **SECTION 16: TERMINATION**

- 16.1 Mutual.** This Grant may be terminated at any time by mutual written consent of the Parties.
- 16.2 By Agency.** Agency may terminate this Grant as follows:
- 16.2.1** At Agency’s discretion, upon 30 days advance written notice to Grantee;
- 16.2.2** Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency’s reasonable administrative discretion, to perform its obligations under this Grant;
- 16.2.3** Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted by a court in such a way that Agency’s performance under this Grant is prohibited or Agency is prohibited from funding the Grant from the Funding Source; or
- 16.2.4** Immediately upon written notice to Grantee, if Grantee is in default under this Grant and such default remains uncured 15 days after written notice thereof to Grantee.

**16.3 By Grantee.** Grantee may terminate this Grant as follows:

- 16.3.1** Immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Grant.
- 16.3.2** Immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted by a court in such a way that the Project activities contemplated under this Grant are prohibited by law or Grantee is prohibited from paying for the Project from the Grant Funds or other planned Project funding; or
- 16.3.3** Immediately upon written notice to Agency, if Agency is in default under this Grant and such default remains uncured 15 days after written notice thereof to Agency.

## **SECTION 17: MISCELLANEOUS**

- 17.1 Conflict of Interest.** Grantee by signature to this Grant declares and certifies the award of this Grant and the Project activities to be funded by this Grant, create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer or employee of Grantee.
- 17.2 Nonappropriation.** Agency's obligation to pay any amounts and otherwise perform its duties under this Grant is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Grant. Nothing in this Grant may be construed as permitting any violation of Article XI, Section 7, of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.
- 17.3 Amendments.** The terms of this Grant may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.
- 17.4 Notice.** Except as otherwise expressly provided in this Grant, any notices to be given under this Grant must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Grant Manager at the physical address or email address set forth in this Grant, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective 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.
- 17.5 Survival.** All rights and obligations of the Parties under this Grant will cease upon termination of this Grant, other than the rights and obligations arising under Sections 9, 11, 12, 14, 15 and subsections 17.5 and 17.13 hereof and those rights and obligations that by their express terms survive termination of this Grant; provided, however, termination of this Grant will not prejudice any rights or obligations accrued to the Parties under this Grant prior to termination.
- 17.6 Severability.** The Parties agree if any term or provision of this Grant is declared by a court of

competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Grant did not contain the particular term or provision held to be invalid.

- 17.7 Counterparts.** This Grant may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Grant so executed constitutes an original.
- 17.8 Compliance with Law.** In connection with their activities under this Grant, the Parties must comply with all applicable federal, state and local laws.
- 17.9 Intended Beneficiaries.** Agency and Grantee are the only parties to this Grant and are the only parties entitled to enforce its terms. Nothing in this Grant provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Grant.
- 17.10 Assignment and Successors.** Grantee may not assign or transfer its interest in this Grant without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Grant without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Grant will not relieve Grantee of any of its duties or obligations under this Grant. The provisions of this Grant will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
- 17.11 Contracts and Subgrants.** Grantee may enter into contracts or subgrants for any of the Project activities required of Grantee under this Grant, however Grantee is required to communicate subgrantee information to Agency in such a manner and timing as prescribed by Agency that Agency considers necessary to fulfill its federal reporting obligations.
- 17.12 Time of the Essence.** Time is of the essence in Grantee's performance of the Project activities under this Grant.
- 17.13 Records Maintenance and Access.** Grantee must maintain all financial records relating to this Grant in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Grant in such a manner as to clearly document Grantee's performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Grant, are collectively referred to as "Records." Grantee acknowledges and agrees Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Grant, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later.
- 17.14 Headings.** The headings and captions to sections of this Grant have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this

Grant.

**17.15 Grant Documents.** This Grant consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:

- This Grant less all exhibits
- Exhibit A (The Project)
- Exhibit C (Federal Terms and Conditions)
- Exhibit B (Insurance)
- Exhibit D (Federal Award Identification)
- Exhibit E (Equity in Grant Access)

**17.16 Merger, Waiver.** This Grant and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Grant. No waiver or consent under this Grant binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

**17.17 Real Property.** If the Project includes the acquisition, construction, remodel or repair of real property or improvements to real property, and if such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Grant Funds provided by section 601(d) of the Social Security Act.

**The signatures of the parties follow on the next page.**

## SECTION 18: SIGNATURES

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS GRANT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The Parties further agree that by the exchange of this Grant electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Grant, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

IN WITNESS WHEREOF, the Parties have executed this Grant as of the dates set forth below.

### STATE OF OREGON acting by and through its Department of Administrative Services

By: \_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

### Clackamas County

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

93-6002286  
Federal Tax ID Number

096992656  
DUNS Number

### Approved for Legal Sufficiency in accordance with ORS 291.047

By: Samuel B. Zeigler  
Senior Assistant Attorney General  
Oregon Department of Justice

by email dated 11/24/2020  
Date

## EXHIBIT A THE PROJECT

### SECTION I. PROJECT DESCRIPTION

Subject to the eligibility requirements of 42 U.S.C. § 801 and any implementation guidance from the U.S. Department of the Treasury, including, without limitation, the guidance identified in Section II below, Grantee will use the Grant Funds to disburse grants to businesses as described more particularly in this Exhibit A and Exhibit E. Grantee represents and warrants that the Grant Funds will be used only to cover those costs of business subgrantees 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 Grantee's budget most recently approved as of March 27, 2020; and (3) were, or are, incurred during the Performance Period. Grantee may not use any Grant Funds to prepay or otherwise cover Grantee-mandated business fees before awarding a grant to an eligible business.

Grantee will disburse Grant Funds only to businesses that meet all of the following minimum **eligibility** requirements; only one application may be submitted per business:

1. The business is headquartered in Oregon and has its principal operations in Oregon.
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.
3. The business is either for-profit or an entity tax-exempt under section 501(c)(3) of the Internal Revenue Code.
4. During the Performance Period, the business incurred necessary expenditures due to the COVID-19 public health emergency.

The following businesses are **ineligible** to apply for or receive funding under the Program:

1. Passive real estate holding companies and entities holding passive investments.
2. Non-profit entities that do not have federal 501(c)(3) status.
3. Businesses that experience a decline in revenues for reasons other than those caused by the COVID-19 pandemic (e.g. seasonal or cyclical businesses cycles).
4. Businesses that are delinquent on federal, state or local taxes that were due on or before the date of application.
5. Businesses that do not comply with all federal, state and local laws and regulations.
6. Businesses that have closed and do not intend to reopen.

#### **Award Amount**

Grantee's grant awards to eligible businesses shall be in amounts determined by Grantee.

#### **Program Access**

Agency intends that the Grant Funds are made accessible to all Oregonians. Accordingly, Agency strongly encourages Grantee to market its grant program and seek subgrantees based on the recommendations set forth in Exhibit E, Equity in Grant Access.

## SECTION II. U.S. Treasury Guidelines and Answers to FAQs

Agency will disburse Grant Funds only for eligible costs incurred by Grantee for the Performance Period and in accordance with criteria and guidance established by US Treasury:

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

Additionally, the US Treasury has provided answers to frequently asked questions regarding eligible costs under the Coronavirus Relief Fund:

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>

**Direct Administrative Costs Allowed.** Grantee's administrative costs directly attributable to the administration of its grant program funded by this Grant can be reimbursed or otherwise paid with Grant Funds. Such direct administrative costs shall not exceed 5% of the Grant Funds awarded under this Grant.

**Indirect Costs Not Allowed.** In accordance with U.S. Treasury guidance, Grantee shall not reimburse or otherwise pay any of its indirect costs with Grant Funds. The information described in this paragraph overrides any other verbal or written rate(s) or information provided by Agency.

## SECTION III. REPORTING REQUIREMENTS

No later than January 5, 2021, Grantee shall provide Agency a final report on the following:

1. Total use of Grant Funds;
2. Total number of applicants and beneficiaries; and
3. For each beneficiary that Grantee awards a grant:
  - a. A short description of the beneficiary's business, including business entity type, industry, number of employees and length of operating history; and
  - b. The demographic information reported on the voluntary demographic questionnaire by owners of each beneficiary business.

Additionally, no later than January 5, 2021, for the period October 1, 2020 to December 30, 2020, Grantee shall report the following information, as applicable, to Agency:

- a. Amount spent on administrative expenses;
- b. Amount spent on budgeted personnel and services diverted to a substantially different use;
- c. Amount spent to COVID-19 testing and contract tracing;
- d. Amount spent on economic support (other than small business, housing, and food assistance);
- e. Amount spent on expenses associated with the issuance of tax anticipation notes;
- f. Amount spent on facilitating distance learning;
- g. Amount spent on food programs;
- h. Amount spent on housing support;
- i. Amount spent to improve telework capabilities of public employees;
- j. Amount spent on medical expenses;



**DAS GRANT #2503 – Coronavirus Relief Fund**

- k. Amount spent on nursing home assistance;
- l. Amount spent on payroll for public health and safety employees;
- m. Amount spent on personal protective equipment;
- n. Amount spent on public health expenses;
- o. Amount spent on small business assistance;
- p. Amount spent on unemployment benefits;
- q. Amount spent on workers' compensation;
- r. Amount spent on items not listed above; and
- s. The primary place of performance of this Project.

The requirements of this Section III survive termination of this Grant.

## **EXHIBIT B INSURANCE**

### **INSURANCE REQUIREMENTS**

Grantee must obtain at Grantee's expense, and require its first tier contractors and subgrantees, if any, to obtain the insurance specified in this exhibit prior to performing under this Grant, and must maintain it in full force and at its own expense throughout the duration of this Grant, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Grantee must obtain and require its first-tier contractors and subgrantees, if any, to obtain the following insurance from insurance companies or entities acceptable to Agency and authorized to transact the business of insurance and issue coverage in Oregon. Coverage must be primary and non-contributory with any other insurance and self-insurance, with the exception of professional liability and workers' compensation. Grantee must pay and require its first-tier contractors and subgrantees to pay, if any, for all deductibles, self-insured retention and self-insurance, if any.

### **WORKERS' COMPENSATION**

All employers, including Grantee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee shall require and ensure that each of its subgrantees, contractors, and subcontractors complies with these requirements. If Grantee is a subject employer, as defined in ORS 656.023, Grantee shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Grantee is an employer subject to any other state's workers' compensation law, Grantee shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000, and shall require and ensure that each of its out-of-state subgrantees, contractors, and subcontractors complies with these requirements.

### **COMMERCIAL GENERAL LIABILITY**

**Required**  **Not required**

Commercial general liability insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to Agency. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Grant, and have no limitation of coverage to designated premises, project or operation. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit may not be less than \$2,000,000.

### **AUTOMOBILE LIABILITY INSURANCE**

**Required**  **Not required**

Automobile liability insurance covering Grantee's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the commercial general liability insurance (with separate limits for commercial general liability and automobile liability). Use

of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

**PROFESSIONAL LIABILITY**

Required  Not required

Professional liability insurance covering any damages caused by an error, omission or any negligent acts related to the activities performed under this Grant by the Grantee and Grantee’s contractors, subgrantees, agents, officers or employees in an amount not less than \$\_\_\_\_\_ per claim. Annual aggregate limit may not be less than \$\_\_\_\_\_. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months must be included in the professional liability insurance coverage, or the Grantee must provide tail coverage as stated below.

**NETWORK SECURITY AND PRIVACY LIABILITY**

Required  Not required

Grantee must provide network security and privacy liability insurance for the duration of the Grant and for the period of time in which Grantee (or its business associates, contractors, or subgrantees) maintains, possesses, stores or has access to Agency or client data, whichever is longer, with a combined single limit of no less than \$\_\_\_\_\_ per claim or incident. This insurance must include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of Agency or client data (which may include, but is not limited to, Personally Identifiable Information (“PII”), payment card data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of Agency data.

**POLLUTION LIABILITY**

Required  Not required

Pollution liability insurance covering Grantee’s or appropriate contractor or subgrantee’s liability for bodily injury, property damage and environmental damage resulting from sudden, accidental, or gradual pollution and related cleanup costs incurred by Grantee, all arising out of the Project activities (including transportation risk) performed under this Grant is required. Combined single limit per occurrence may not be less than \$\_\_\_\_\_. Annual aggregate limit may not be less than \$\_\_\_\_\_.

An endorsement to the commercial general liability or automobile liability policy, covering Grantee’s, contractor, or subgrantee’s liability for bodily injury, property damage and environmental damage resulting from sudden, accidental, or gradual pollution and related clean-up costs incurred by Grantee that arise from the Project activities (including transportation risk) performed by Grantee under this Grant is also acceptable.

**DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY**

Required  Not required

Directors, officers and organization liability insurance covering the Grantee’s organization, directors, officers, and trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight - including improper oversight and/or use of Grant Funds and donor contributions - with a combined single limit of no less than \$\_\_\_\_\_ per claim.

**CRIME PROTECTION COVERAGE: EMPLOYEE DISHONESTY or FIDELITY BOND**

Required  Not required

Employee dishonesty or fidelity bond covering loss of money, securities and property caused by dishonest acts of Grantee’s employees. Coverage limits may not be less than \$\_\_\_\_\_.

**PHYSICAL ABUSE AND MOLESTATION INSURANCE COVERAGE**

Required  Not required

Abuse and molestation insurance in a form and with coverage satisfactory to the State covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Grantee, its contractors, subcontractors or subgrantees (“Covered Entity”) is responsible including but not limited to any Covered Entity’s employees and volunteers. Policy endorsement’s definition of an insured must include the Covered Entity and its employees and volunteers. Coverage must be written on an occurrence basis in an amount of not less than \$\_\_\_\_\_ per occurrence. Any annual aggregate limit may not be less than \$\_\_\_\_\_. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits must be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, must be treated as a separate occurrence for each victim. Coverage must include the cost of defense and the cost of defense must be provided outside the coverage limit.

**EXCESS/UMBRELLA INSURANCE**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**ADDITIONAL INSURED**

All liability insurance, except for workers’ compensation, professional liability, and network security and privacy liability (if applicable), required under this Grant must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Grantee’s activities to be performed under this Grant. Coverage must be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Grantee’s ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

**WAIVER OF SUBROGATION**

Grantee waives, and must require its first tier contractors and subgrantees waive, rights of subrogation which Grantee, Grantee’s first tier contractors and subgrantees, if any, or any insurer of Grantee may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Grantee must obtain, and require its first tier contractors and subgrantees to obtain, any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Grantee or the Grantee’s insurer(s).

## **TAIL COVERAGE**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Grantee must maintain, and require its first tier contractors and subgrantees, if any, maintain, either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the Effective Date of this Grant, for a minimum of 24 months following the later of (i) Grantee's completion and Agency's acceptance of all Project activities required under this Grant, or, (ii) Agency or Grantee termination of Grant, or, (iii) the expiration of all warranty periods provided under this Grant.

## **CERTIFICATE(S) AND PROOF OF INSURANCE**

If Grantee is self-insured for any of the Insurance Requirements specified in Exhibit B of this Agreement, Grantee may so indicate by submitting a certificate of insurance as required in this Exhibit B.

At Agency's request, Grantee must provide to Agency a Certificate(s) of Insurance for all required insurance. The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) must also include all required endorsements or copies of the applicable policy language effecting coverage required by this Grant. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance, Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Grant. Grantee must furnish acceptable insurance certificates to: [CoronavirusReliefFund@oregon.gov](mailto:CoronavirusReliefFund@oregon.gov) or by mail to: Department of Administrative Services, Attention: Coronavirus Relief Fund, 155 Cottage Street NE, Salem, OR, 97301 prior to commencing the work.

## **NOTICE OF CHANGE OR CANCELLATION**

Grantee or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

## **INSURANCE REQUIREMENT REVIEW**

Grantee agrees to periodic review of insurance requirements by Agency under this Grant, and to provide updated requirements as mutually agreed upon by Grantee and Agency.

## **STATE ACCEPTANCE**

All insurance providers are subject to Agency acceptance. If requested by Agency, Grantee must provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this exhibit.

## EXHIBIT C

### FEDERAL TERMS AND CONDITIONS

#### 1. FEDERAL FUNDS

1.1. If specified below, Agency's payments to Grantee under this Grant will be paid in whole or in part by funds received by Agency from the United States Federal Government. If so specified then Grantee, by signing this Grant, certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government.

Payments  will  will not be made in whole or in part with federal funds.

1.2. In accordance with the Chief Financial Office's Oregon Accounting Manual, policy 30.40.00.104, Agency has determined:

Grantee is a subrecipient       Grantee is a contractor       Not applicable

1.3. Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Grant: 21.019

#### 2. FEDERAL PROVISIONS

2.1. The use of all federal funds paid under this Grant are subject to all applicable federal regulations, including the provisions described below.

2.2. Grantee must ensure that any further distribution or payment of the federal funds paid under this Grant by means of any contract, subgrant, or other agreement between Grantee and another party for the performance of any of the activities of this Grant, includes the requirement that such funds may be used solely in a manner that complies with the provisions of this Grant.

2.3. Grantee must include and incorporate the provisions described below in all contracts and subgrants that may use, in whole or in part, the funds provided by this Grant.

2.4. Grantee must comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Grantee 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.

**In accordance with U.S. Treasury guidance – Grantee is subject to the following provisions, as applicable.**

If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to DAS.

For purposes of these provisions, the following definitions apply:

**“Contract”** means this Grant or any contract or subgrant funded by this Grant.

**“Contractor”** and **“Subrecipient”** and **“Non-Federal entity”** mean Grantee or Grantee's contractors or subgrantees, if any.

(A) 2 CFR §200.303 Internal Controls

(B) 2 CFR §§ 200.330 through 200.332 Subrecipient Monitoring and Management

(C) Subpart F – Audit Requirements of 2 CFR §§ 200.500 *et seq.*

i. Contractor must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.

ii. If Contractor receives federal awards in excess of \$750,000 in a fiscal year, Contractor is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to Agency within 30 days of completion.

iii. Contractor must save, protect and hold harmless Agency from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Contract. Contractor acknowledges and agrees that any audit costs incurred by Contractor as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Contractor and State.

(D) System for Award Management. Grantee must comply with applicable requirements regarding the 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. The Grantee also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the Grantee) the unique entity identifier required for SAM registration.

### **3. ADDITIONAL FEDERAL REQUIREMENTS**

None.

## EXHIBIT D

### FEDERAL AWARD IDENTIFICATION

#### (Required by 2 CFR 200.331(a))

(i) Grantee Name: <i>(must match DUNS registration)</i>	Clackamas County
(ii) Grantee's DUNS number:	096992656
(iii) Federal Award Identification Number (FAIN):	
(iv) Federal award date: <i>(date of award to DAS by federal agency)</i>	March 27, 2020
(v) Grant period of performance start and end dates:	Start: March 1, 2020 End: December 30, 2020
(vi) Total amount of federal funds obligated by this Grant:	\$4,168,536.00
(vii) Total amount of federal funds obligated to Grantee by Agency, including this Grant:	\$21,878,703.48
(viii) Total Amount of Federal Award committed to Grantee by Agency: <i>(amount of federal funds from this FAIN committed to Grantee)</i>	\$21,878,703.48
(ix) Federal award project description:	Coronavirus Relief Fund
(x)	
a. Federal awarding agency:	U.S. Department of the Treasury
b. Name of pass-through entity:	Oregon Department of Administrative Services
c. Contact information for awarding official of pass-through entity:	Gerold Floyd, CoronavirusReliefFund@Oregon.gov
(xi) CFDA number, name, and amount:	Number: 21.019 Name: Coronavirus Relief Fund Amount: \$1,388,506,837.10
(xii) Is award research and development?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xiii) Indirect cost rate:	Not allowed per U.S. Treasury guidance
(xiv) Is the 10% de minimis rate being used per §200.414?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>



## **EXHIBIT E**

### **EQUITY IN GRANT ACCESS**

Agency intends that the Grant Funds be made accessible to all Oregonians, including members of historically underserved population groups (including, but not limited to, Asian, Pacific Islander, Black, Hispanic, Native American, Indigenous, members of Tribes and women).

Accordingly, Agency strongly encourages Grantee to implement its grant program so that it targets one or more of the following types of businesses:

- a. Businesses with less than 100 employees
- b. Businesses within rural areas
- c. Businesses that identify as minority-owned, women-owned, service-disabled veteran-owned, and emerging small businesses
- d. Nonprofit business entities owned by Black, Indigenous, Asian Pacific Islander and all other People of Color and/or women (or eligible nonprofits primarily serving these communities)

#### **MARKETING AND OUTREACH**

Additionally, Agency strongly encourages Grantee to conduct a robust marketing program that reaches out locally to businesses by:

- Utilizing program marketing and application materials provided by Agency and, when feasible, make such materials available in languages that are representative of the local population.
- Conducting a stepped marketing program that reaches out and markets to members of historically underserved population groups in advance of marketing to the general public. Attached to this Exhibit as Attachment 1 is a contact list of culturally specific organizations that are available to help Grantee implement its stepped marketing program. Agency encourages Grantee to contact and partner with one or more of these organizations in its marketing efforts.
- Using the State of Oregon’s “Equity Framework in COVID-19 Response and Recovery” as a guide in the design of Grantee’s grant program:  
[https://www.oregon.gov/gov/policy/Documents/EquityFrameworkCovid19\\_2020.pdf](https://www.oregon.gov/gov/policy/Documents/EquityFrameworkCovid19_2020.pdf).

## **Attachment 1 to Exhibit E**

### **List of Culturally Specific Organizations**

1. Adelante Mujeres – Andrea Chunga-Celis, achungacelis@adelantemujeres.org
2. IRCO – Jenny Bremner, jennyb@irco.org
3. MESO – Stephanie Basalyga, sbasalyga@mesopdx.org
4. The Urban League of Portland – Cinna’Mon Williams, CWilliams@ulpdx.org
5. Latino Built – Leanna Petrone, Leanna@latinobuilt.org
6. RDI – Jennifer Groth, jgroth@rdiinc.org
7. Professional Business Development Group – Kenechi Onyeagusi, kenechi@pbdgweb.com
8. RAIN – Jennifer Damiani, jennifer@scoutconsultants.com
9. EDCO – Brian Vierra, brian@edcoinfo.com
10. Huerto de la Familia – Marissa Zarate, marissa@huertodelafamilia.org
11. A Greater Applegate – Seth Kaplan, seth@agreaterapplegate.org
12. Centro Cultural – Jonath Colon Montesi, jcolon@centrocultural.org
13. High Desert Partnership – Brenda Smith, director@highdesertpartnership.org
14. Micro Enterprise Resources Initiative and Training (MERIT) – Hugo Munez, VISION2@meritnw.org
15. Umatilla Electric Cooperative – Emily Cecil, uecbrc@gmail.com
16. Philippine American Chambers of Commerce – Jan Mason (PACCO), janice.pacco@gmail.com
17. Black American Chamber of Commerce – Jesse Hyatt (BACC), jesse.hyatt@blackamericanchamber.org
18. Hispanic Metropolitan Chamber – Carmen Castro, ccastro@hmccoregon.com
19. Ashland Chamber of Commerce – Sandra Slattery, sandra@ashlandchamber.com
20. Native American Youth and Family (NAYA) – Sky Waters, SkyW@nayapdx.org
21. Asian Pacific American Network of Oregon (APANO) – Todd Struble, todd@apano.org
22. Metropolitan Contractor Improvement Partnership – John Jackley, john@mcip-pdx.org
23. Hacienda CDC – Aldo Medina, amedina@haciendacdc.org
24. Oregon Native American Chamber (ONAC) – James Parker, jparker@onacc.org
25. Oregon Latinx Leadership Network – Anthony Veliz, aveliz@izomarketing.com

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26. CAUSA – Adriana Miranda, [adriana@causaoregon.org](mailto:adriana@causaoregon.org)
27. Coalition of Communities of Color – Marcus Mundy, [marcus@coalitioncommunitiescolor.org](mailto:marcus@coalitioncommunitiescolor.org)
28. COFA Alliance National Network – Joe Enlet, [fsmcgportland@gmail.com](mailto:fsmcgportland@gmail.com)
29. Latino Community Association – Brad Porterfield, [brad@latinocommunityassociation.org](mailto:brad@latinocommunityassociation.org)
30. Salem Capitol Connections – Marin Arreola, [advancedecon@aol.com](mailto:advancedecon@aol.com)
31. Oregon Association of Minority Entrepreneurs – Jorge Guerra, [jorge@oame.org](mailto:jorge@oame.org)
32. National Association of Minority Contractors – Nate McCoy, [nate@namc-oregon.org](mailto:nate@namc-oregon.org)
33. PCUN- Small Business Cohort – Omar Alvarado, [omaralvarado@pcun.org](mailto:omaralvarado@pcun.org)
34. Warm Springs Community Action Team – Dustin Seyler, [dustin@wscat.org](mailto:dustin@wscat.org)

Dave Cummings  
Chief Information Officer

## Technology Services

121 Library Court Oregon City, OR 97045



Board of County Commissioners  
Clackamas County

Members of the Board:

**Authorization to Contract for the Microsoft Enterprise Agreement for Software and  
Licensing from Dell Marketing L.P.**

<b>Purpose/Outcomes</b>	Continued and Expanded utilization of Microsoft Windows, Office, M365, Exchange, Server, SQL and related products and licenses.
<b>Dollar Amount and Fiscal Impact</b>	\$2,532,944.64 Total Contract over 3 years
<b>Funding Source</b>	Existing Technology Services allocated budget. Specifically 747-0227 capital fund.
<b>Duration</b>	3 years starting on January 1 <sup>st</sup> 2021, ending Dec 31 <sup>st</sup> 2023
<b>Previous Board Action</b>	Approval of current Enterprise Agreement Renewal in FY 17-18
<b>Strategic Plan Alignment</b>	Direct support for County and Technology Service initiatives for: <ul style="list-style-type: none"> <li>- Build a strong infrastructure</li> <li>- Build public trust through good government</li> </ul>
<b>Counsel Review</b>	12/08/2020, ARN
<b>Procurement Review</b>	Yes
<b>Contact Person</b>	Dave Devore (503) 723-4996
<b>Contract No.</b>	3569

**BACKGROUND:**

Clackamas County has made a significant investment in technology to support and enhance the County business functions. A large and crucial component of this investment is in the desktop / server system software, office product tools, email services, systems & account management / security and system connectivity. While Technology Services is constantly monitoring the marketplace and available products, the County has chosen to follow what continues to be the industry standard products provided by the Microsoft. This platform and suite of products is the best fit for the technical and business requirements of the County.

The Microsoft Enterprise Agreement provides a volume discount for a large suite of products with a simplified licensing mechanism that allows for both cloud hosted and on premise versions of Office, Windows, and related server access licenses. This allows for the best value on licensing costs for continuously updating applications and the most flexibility as we continue to provide a secure, adaptive hybrid model of County hosted and cloud hosted applications and data.

The State of Oregon maintains a Master Enterprise Agreement with Microsoft which allows local governments to take advantage of statewide purchasing price levels when developing their own Enterprise Agreement with Microsoft. Technology Services has worked closely with Microsoft on a new Agreement to keep the costs as low as possible while still covering the product and licensing requirements of the County.

Funds for this Agreement are budgeted in the Technology Services budget in Fund 747 Program 227 Account 437231. TS will continue to budget funds for the duration of this agreement through FY21-22 and FY22-23. The Clackamas County Sheriff is also budgeting funds to contribute to cover their portion of license usage.

**PROCUREMENT PROCESS**

Approval of this purchase is being requested under the Local Contract Review Board Rule C-046-0440, Authority of Cooperative Procurements. The purchase will be made off cooperative contract #MHEC-07012015, Midwestern Higher Education Commission with Dell Marketing, L.P. In accordance with C-046-0440, Procurement issued a notice of intent to purchase off of the cooperative on November 19, 2020. No comments to the notice were received.

**RECOMMENDATION:**

Staff respectfully recommends approval of the Microsoft Enterprise Agreement through Dell Marketing, L.P. Staff further recommends that the Board delegate authority to the Technology Services Director to sign agreements necessary in the ongoing performance of this Agreement.

Sincerely,

David Cummings, CIO  
Director, Clackamas County Technology Services

Placed on the \_\_\_\_\_ agenda by Procurement

**CLACKAMAS COUNTY**  
**MICROSOFT MASTER LICENSE AGREEMENT**  
**Contract #3569**

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), on behalf of its Technology Services department and Dell Marketing, L.P. (“Contractor”). This Addendum shall be attached to, and incorporated into, the Midwestern Higher Education Commission Cooperative Contract # 07012015 for Microsoft Master License Agreement. (“Vendor Agreement”). As used below, "Contract" means this Addendum and the Vendor Agreement. To the extent there is any conflict between the Addendum and the Vendor Agreement, the terms of this Addendum shall control.

- A. Term.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on December 30, 2023
- B. Consideration.** The total consideration paid by the County under the Contract shall not exceed Two Million Five Hundred Thirty Two Thousand Nine Hundred Forty Four and Sixty Four Cents (\$2,532,944.64) as identified in the attached Dell Quote dated October 1, 2020.
- C. County Contract Administrator.** The County Contract Administrator for this Contract is **Chris Fricke**, [CFricke@clackamas.us](mailto:CFricke@clackamas.us).
- D. Invoices and Payments.** Invoices shall be submitted to: Stephanie Cry, [SCry@clackamas.us](mailto:SCry@clackamas.us).

Payment and late fees shall only be in accordance with ORS 293.462.

- E. Insurance.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [procurement@clackamas.us](mailto:procurement@clackamas.us).

Required - Workers Compensation: Contractor shall comply with the workers’ compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

The insurance described in this section shall not be cancelled or materially changed without Contractor providing at least sixty (60) days written notice to the County. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- F. Debt Limitation.** The Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- G. Public Contracting Requirements.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

1. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
2. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.

Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

4. As applicable, Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.

**H. Governing Law; Venue.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

**I. Termination.** This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor and, upon receipt of the written notice, Contractor shall stop performance, and County shall pay Contractor for the goods or services delivered and accepted; (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (iii) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

**J. Compliance.** Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract.

**K. Tax Compliance.** Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all current and applicable tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue damages that arise from the breach and the termination of this Contract, and to pursue remedies available under this Contract or applicable law.

**L. Indemnification.** Contractor agrees to indemnify, hold harmless and defend the County, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of Contractor or Contractor's employees or agents. Any obligation of the County to indemnify, hold harmless and defend Contractor, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the County or the County's employee or agents.

**M. Dispute Resolution.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Contract waiving a right to a jury trial or requiring binding arbitration are void.

**N. Records.** Contractor shall maintain all accounting records relating to this Contract according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant County, the federal government, and their duly authorized representatives access to the Records, including reviewing, auditing, copying, and making transcripts. Any documents that are requested to

be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law ORS 192.

- O. Subcontractors.** Contractor shall ensure that its subcontractors, if any, comply with the requirements of this Addendum.
- P. Counterparts.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- Q. Waiver.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- R. Notices.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract administrators identified in Article 1, Section 6. If the notice is sent to County, a copy shall be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045h, or [procurement@clackamas.us](mailto:procurement@clackamas.us). Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours of the email is sent during County’s normal business hours (Monday-Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein.

Dell Marketing, L.P.

Clackamas County

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Jim Bernard, Chair    Date

\_\_\_\_\_  
Name/Title (Printed)

\_\_\_\_\_  
Recording Secretary    Date

Approved As To Form:

\_\_\_\_\_  
Clackamas County Counsel    Date