

# **INTERGOVERNMENTAL AGREEMENT**

## **Agreement No. C2021220**

This Agreement is between the State of Oregon acting by and through its Oregon Business Development Department (“OBDD” or “Agency”) and Tillamook County (“Local Government” or “Recipient”), each a “Party” and, together, the “Parties”.

### **SECTION 1: AGREEMENT PURPOSE, AUTHORITY AND DISBURSEMENT GENERALLY**

The Governor’s office in partnership with the Oregon Legislature’s Emergency Board, on June 5, 2020, allocated \$10 Million from the federal CARES Act funding for the purchases of personal protective supplies (“PPE”) for small business. The State of Oregon is fulfilling eligible orders at no charge until PPE resources are depleted. OBDD shall work with local governments to distribute PPE and similar items such as gloves, masks and gowns to Oregon businesses, statewide.

OBDD is authorized to enter into Intergovernmental Agreements for the distribution of grants from the Oregon Business, Innovation and Trade Fund established in ORS 285A.227, including this Agreement. The maximum not-to-exceed grant value of PPE to be distributed to Recipient is \$100,000. OBDD will distribute the PPE to Recipient as described in Exhibit A.

This Agreement includes Exhibit A – Statement of Work, Exhibit B - Federal Terms and Conditions and Exhibit C - FEDERAL AWARD IDENTIFICATION (Required by 2 CFR 200.331(a)).

This Agreement shall become effective on the date of the last signature, and shall terminate on December 31, 2021, or the date in which the Coronavirus Aid, Relief, and Economic Security (CARES Act) funding expires, whichever occurs last, unless terminated earlier in accordance with Section 8.

### **SECTION 2: AUTHORIZED REPRESENTATIVES**

#### **2.1 Agency’s Authorized Representative is:**

Robert Ault  
Enterprise Innovation & Change Manager  
775 Summer St NE, Salem OR 97301  
503-551-0917  
Robert.Ault@oregon.gov

**2.2** Local Government’s Authorized Representative is:

Gordon McCraw  
6030 Hangar Rd  
Tillamook, OR 97141  
503-801-4889  
Gmccraw@Co.tillamook.or.us

**2.3** A Party may designate a new Authorized Representative by written notice to the other Party.

**SECTION 3: RESPONSIBILITIES OF EACH PARTY**

- 3.1** Local Government shall perform the work set forth on Exhibit A, attached hereto and incorporated herein by this reference.
- 3.2** Agency shall provide PPE to Local Government as described in Exhibit A. Agency has the right, in its sole discretion, to distribute PPE to Local Government in a value less than the maximum not-to-exceed value amount provided in Section 1.

**SECTION 4: REPRESENTATIONS AND WARRANTIES**

Local Government represents and warrants to Agency that this Agreement has been duly executed and delivered by Local Government and constitutes a legal, valid and binding obligation of Local Government enforceable in accordance with its terms.

**SECTION 5: GOVERNING LAW, CONSENT TO JURISDICTION**

This Agreement shall be 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 Local Government that arises from or relates to this Agreement shall 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 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 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. Local government, by execution of this agreement, hereby consents to the in personam jurisdiction of said courts.

**SECTION 6: INDEMNITY**

Each party will defend (subject to ORS chapter 180), save and hold harmless the other from all claims, suits or actions of whatsoever nature, arising out of its activities under this agreement.

The parties' indemnification is limited to the extent permitted by Article XI, section 7 of the Oregon Constitution and by the Oregon Tort Claims Act and its limits.

## **SECTION 7: LIMITATION OF LIABILITY**

Neither party will be liable for incidental, consequential, or other indirect damages arising out of or related to this agreement, regardless of whether the liability claim 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 agreement in accordance with its terms.

## **SECTION 8: TERMINATION**

This Agreement may be terminated at any time by mutual written consent of the Parties.

## **SECTION 9: MISCELLANEOUS**

**9.1 Nonappropriation.** Agency's obligation to distribute PPE, pay any amounts and otherwise perform its duties under this Agreement 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 Agreement. Nothing in this Agreement 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.

**9.2 Amendments.** The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

**9.3 Notices.** Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, 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. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

**9.4 Severability.** The Parties agree that if any term or provision of this Agreement 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 Agreement did not contain the particular term or provision held to be invalid.

**9.5 Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

**9.6 Compliance with law.** In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

**9.7 Independent contractors.** The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Local Government is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

**9.8 Intended beneficiaries.** Agency and Local Government are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement 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 Agreement.

**9.9 Force majeure.** Neither Party is responsible for any failure to perform nor any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to Local Government after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

**9.10 Assignment and successors in interest.** Local Government may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Local Government to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Local Government's assignment or transfer of its interest in this Agreement will not relieve Local Government of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

**9.11 Subcontracts.** Local Government shall not, without Agency's prior written consent, enter into any subcontracts for any of the work required of Local Government under this Agreement. Agency's consent to any subcontract will not relieve Local Government of any of its duties or obligations under this Agreement.

**9.12 Time is of the essence.** Time is of the essence in Local Government's performance of its obligations under this Agreement.

**9.13 Merger and waiver.** This Agreement 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 Agreement. No waiver or consent under this Agreement 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.

**9.14 Records maintenance and access.** Local Government shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Local Government shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Local Government's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Local Government acknowledges and agrees that 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. Local Government shall 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 Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, Local Government shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

**SECTION 10: SIGNATURES**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below. Each party, by signature of its authorized representative, hereby acknowledges that it has read this agreement, understands it, and agrees to be bound by its terms and conditions.

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

\_\_\_\_\_  
Chris Cummings, Assistant Director Economic Development

\_\_\_\_\_  
Date

**Tillamook County**

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

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

\_\_\_\_\_  
Date

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

Not Required per OAR 137-045-0030  
\_\_\_\_\_

## **EXHIBIT A**

### **STATEMENT OF WORK**

OBDD will distribute PPE to Local Government in one or more deliveries and in amounts as OBDD in its sole discretion determines. Local Government will receive, store, and distribute PPE from OBDD.

- 1. Receiving PPE.** Local Government will arrange to accept delivery of PPE from OBDD according to a mutually agreed upon schedule.
- 2. Inspect of PPE.** Local Government will inspect the PPE and notify OBDD of defects.
- 3. Organize PPE.** Local Government will store and safeguard the PPE as necessary in order to make award decisions and prepare for the distribution of the PPE to Oregon businesses.
- 4. Distribution of PPE.** Local Government will make PPE award decisions and distribute the PPE to eligible Oregon small businesses according to criteria supplied by OBDD and in compliance with the Federal Terms and Conditions provided in Exhibit B. Notwithstanding the not-to-exceed amount provided for in Section 1, Local Government will make obligated small business award decisions only for those PPE resources from OBDD for which the Local Government has accepted delivery. OBDD may expand the scope of distribution as OBDD determines is necessary to serve Oregon businesses.
- 5. Reporting of PPE Distribution/ Return of PPE.** Local Government will make a record of the names of all businesses that receive PPE from the Local Government under this Agreement, along with the amount and type of PPE each respective business receives, providing the record to OBDD within 30 days of the final distribution, but no later than February 1, 2022. Local Government will also provide federal Progress Reports to OBDD and return any PPE as required by Exhibit B.

## **EXHIBIT B**

### **Federal Terms and Conditions**

#### **1. Background and Goals**

In response to the public health crisis in Oregon, the Intergovernmental Agreement provides personal protective equipment (PPE) provided for under the CARES Act, Coronavirus Relief Fund, that:

1. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); and
2. Were not accounted for in OBDD's or Local Government's budget most recently approved as of March 27, 2020; and
3. Were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021.

#### **2. Project Activities, Schedule**

Coronavirus Relief Funds may be used only for costs resulting from COVID-19 that were incurred between March 1, 2020 and December 31, 2021. Pursuant to current U.S. Treasury Guidance, for a cost to be considered to have been incurred, performance or delivery must occur during the covered period but payment of funds need not be made during that time (though it is generally expected that this will take place within 90 days of a cost being incurred).

Recipients must return any PPE that has not been awarded by December 31, 2021, to OBDD or as OBDD directs.

#### **3. U.S. Treasury Guidelines and Answers to FAQs**

Recipient will disburse and return the PPE in accordance with criteria and guidance established and updated 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>

Indirect/Administrative Costs. Recipient will not be reimbursed for any indirect costs with Agreement Funds in accordance with U.S. Treasury guidance. The information described in this paragraph overrides any other verbal or written rate(s) or information provided by OBDD.

**4. Reporting Requirements**

Progress reports for the Coronavirus Relief Funds are due by October 5, 2021 (for the period October 1, 2020 to September 30, 2021) and within 30 days of the final distribution, but no later than February 1, 2022 (for the period October 1, 2021 to December 31, 2021). Recipient shall report the following information:

Amount of personal protective equipment distributed under this Agreement.

**5. Disbursement Provisions**

OBDD will disburse the PPE after the Agreement is signed and executed, as described in Exhibit A.

**6. Federal Funds**

OBDD’s PPE disbursements to Recipient under this Intergovernmental Agreement will be paid in whole or in part by funds received by the State of Oregon from the United States Federal Government. Recipient, by signing this Agreement, certifies neither it nor its employees, contractors, subcontractors or sub-Recipients who will perform the Project activities are currently employed by an agency or department of the federal government.

**7. Federal Provisions**

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

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

Recipient must include and incorporate the provisions described in this Exhibit in all contracts and subgrants that may use, in whole or in part, the funds provided by this Agreement.

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

For purposes of these provisions, the following definitions apply:

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

“**Contractor**” and “**Subrecipient**” and “**Non-Federal entity**” mean Recipient or Recipient’s contractors or subrecipients, 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 through 200.521

  - i.** Recipient 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 Recipient receives federal awards in excess of \$750,000 in a fiscal year, Recipient 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 OBDD within 30 days of completion.
  - iii.** Recipient must save, protect and hold harmless OBDD from the cost of any audits or special investigations performed by the Secretary of State 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 State.
- (D)** System for Award Management. Recipient 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 Recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "sub-Recipients"), including restrictions on subawards to entities that do not acquire and provide (to the Recipient) the unique entity identifier required for SAM registration.
- (E)** Federal Whistleblower Protection. Recipient shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, enhancement of employee protection from reprisal for disclosure of certain information.

## EXHIBIT C

### FEDERAL AWARD IDENTIFICATION

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

(i) Recipient Name*: <i>(must match DUNS registration)</i>	Tillamook, County of
(ii) Recipient's DUNS number:	06-058-4554
(iii) Federal Award Identification Number (FAIN):	NA
(iv) Federal award date: <i>(date of award to DAS by federal agency)</i>	June 5, 2020
(v) Agreement period of performance start and end dates:	Start: March 1, 2020 End: December 31, 2021
(vi) Total amount of federal funds obligated by this Agreement:	\$100,000
(vii) **Total amount of federal award committed to Recipient by Agency: <i>(amount of federal funds from this FAIN committed to Recipient)</i>	\$100,000
(viii) Federal award project description:	Coronavirus Relief Fund
(ix) Federal awarding agency:	U.S. Department of the Treasury
Name of pass-through entity:	Oregon Business Development Department
Contact information for awarding official of pass-through entity:	Robert Ault <a href="mailto:Robert.Ault@oregon.gov">Robert.Ault@oregon.gov</a> 503-551-0917
(x) CFDA number, name, and amount:	Number: 21.019 Name: Coronavirus Relief Fund Amount:
(xi) Is award research and development?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xii) Indirect cost rate:	Not allowed per U.S. Treasury guidance
Is the 10% de minimis rate being used per §200.414?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<p>*For the purposes of this Exhibit C, "Subrecipient" refers to Recipient and "pass-through entity" refers to OBDD.</p> <p>**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.</p>	