



CITY OF DONALD

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Agreement Between the City of Donald and --- For Donald COVID-19 Financial Business Assistance Program

THIS AGREEMENT is made this ____ day of _____ 2020 ("Effective date"), by and between the City of Donald, an Oregon municipal corporation ("the City") and _____ ("the Recipient"), the recipient of award funds from the City's CARES ACT Funds, collectively referred to as the "Parties."

WHEREAS, on March 16, 2020, the Donald City Council declared a public health emergency in Donald arising from the COVID-19 outbreak; and

WHEREAS, Governor Brown issued Proclamation 20-03 on March 8, 2020, declaring a statewide state of emergency pursuant to ORS Chapter 401, due to COVID-19 outbreak in Oregon. The emergency declaration extended for 60 days, through May 7, 2020, and

WHEREAS, Governor Brown issued Proclamation 20-24 on May 1, 2020, finding that COVID-19 continued to threaten public health and safety, and remains a statewide emergency under ORS 401.025, extending the state of emergency an additional 60 days through July 6, 2020, and

WHEREAS Governor Brown extended the statewide emergency an additional 60 days, through September 4, 2020, and

WHEREAS businesses in Donald were shut down completely preceding and during Phase 1 in Marion County starting May 15, and

WHEREAS, Since June 19, Marion County has been in Phase 2 of the phased reopening plan, and many businesses located in Donald are open only with a limited capacity and/or reduced operations; and

WHEREAS, Governor Brown instituted a Two-Week Freeze on November 13, 2020 creating additional regulations, disruption and restrictions for businesses; and

WHEREAS, disruptions to workers and small businesses are serious, as small businesses are the backbone of our economy, and provide the foundation of employment, services for the community, and revenue for cities and other public agencies to continue to provide essential services for the public welfare and benefit; and

WHEREAS, the Donald City Council recognizes that one of its essential functions is to secure the health and welfare of Donald's citizens; and

WHEREAS, resources are necessary to help small businesses survive and certain small businesses reasonably require public aid in order to survive; and

WHEREAS, on March 27, 2020, the United States Congress adopted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") which, among other things, amended Section 601(a) of the Social Security Act and established the Coronavirus Relief Fund, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") (PL 116-136), established the Coronavirus Relief Fund and appropriated \$150 billion to the Fund be used to make payments for specified uses to States and certain local governments; and

WHEREAS, guidance issued by the U.S. Treasury Department indicates that necessary expenditures incurred due to the COVID-19 public health emergency include costs incurred to support local businesses that suffered losses due to COVID-19 business interruptions, or incurred costs for personal protective equipment or other materials, supplies and equipment needed to safely operate following a COVID-19-related closure; and

WHEREAS, the Oregon State allocation of Fund resources has been designated to reimburse certain additional local governments in the state; and

WHEREAS, on November 10, 2020 the Donald City Council delegated the City Manager to create the Donald COVID-19 Financial Business Assistance Program and to deliver CARES Act funds to Donald-based businesses upon them demonstrating their need and qualifying expense and limiting the total of the Program to a maximum of \$15,000.; and

WHEREAS, the Recipient applied for and has been selected by the City to receive a from the Donald COVID-19 Financial Business Assistance Program ("Funds") for allowable expenses, as set forth herein.

NOW THEREFORE, the Parties do hereby agree as follows:

AGREEMENT

1. Incorporation of Recitals/Exhibits. The Recitals and referenced Exhibits are incorporated herein by this reference.

2. Award Amount and Eligible Expenses. The total amount of Funds to be awarded to Recipient is \$_____. Recipient shall use Funds only to pay or reimburse Recipient for Eligible Expenses incurred during the time period set forth in Section 3. A list of Eligible and Ineligible Expenses is included in Exhibit 1. In the event an expenditure is submitted that is ineligible for payment per Exhibit 1, it will not be reimbursed by Commerce or the City.

3. Time Period. All Eligible Expenses must be incurred by the Recipient since March 1, 2020. Any expenses incurred before are not eligible expenses for Funds. The Recipient understands that any expenses incurred in excess of Funds are the Recipient's sole responsibility and will not be paid by the City.

4. Source of Funds. The Parties acknowledge that funding for this Agreement comes solely as reimbursement of, or payments made to, the City from the State of Oregon. The City has no independent obligation to provide the Recipient with funds from any other source.

5. Compliance with Federal, State and Local Laws. The Recipient shall comply with and obey all applicable federal, state and local laws, regulations, and ordinances. Should the Recipient's spending of the Funds be inconsistent with applicable laws, provisions of this Agreement, or otherwise inappropriate, the City shall have the right to the return of any portion of the Funds that are later determined to have been spent in violation of applicable laws. In the alternative, the City may recapture such funds from the business in the form of payments. The City shall not exercise this right until it has given written notice of noncompliance with applicable laws or this Agreement to Recipient and allowed Recipient a period of ten (10) days from the date of notice for Recipient to cure the noncompliance. The right of recapture provided in this section is in addition to and not in lieu of any right which Oregon law provides for breach of contract.

a. No Use of Funds for Expenses Covered by Other Programs. The Recipient shall not use Funds to cover payroll. The Recipient shall not use Funds for any other employee-related or business-associated costs for which the Recipient has received other federal, state or regional funds, including without limitation funds made available under the Payroll Protection Program ("PPP") or unemployment insurance compensation.

b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction. Recipient certifies, by signing this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.

6. Maintenance of Records; Public Records. The Recipient shall maintain accurate written records, including accounting records such as invoices, sales receipts, and proof of payment, books, documents, data and other evidence that reflects all of Recipient's direct and indirect expenditures of Funds. These records must be sufficient to demonstrate that the funds have been used in accordance with Section 601(d) of the Social Security Act. The City may at any time review the documentation to determine the Recipient's conformance with the requirements of the Funds program, and the Recipient shall make available to the City, upon request, all of the Recipient's records and documents with respect to all matters covered by this Agreement.

a. The City may require the Recipient to provide additional documentation if the existing documentation is deemed incomplete.

b. The Recipient shall retain all records related to this Agreement for a period of six (6) years following the receipt of Funds. These records, including materials generated under the contract, shall be subject at all reasonable times to inspection and review by the City, and to an audit by the federal and state officials so authorized by law, regulation or agreement.

c. If any litigation, claim or audit is started before the expiration of the six (6) year period provided in Section 7(b) above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

d. All Recipient documents and records comprising this Agreement, and all other documents and records provided to the City by the Recipient, are deemed public records subject to disclosure under the Oregon State Public Records Act, Chapter 192. Thus, the City may be required, upon request, to disclose the Agreement and documents or records related to it unless an exemption under the Public Records Act or other laws applies.

7. Contract Amendments. The Parties acknowledge that the State of Oregon may request changes to the Funds or its provisions. Any changes or revisions to the Fund terms and conditions that are applicable to this Agreement shall be incorporated by amendment of this Agreement, following written notice by City to the Recipient.

8. Nondiscrimination. During the performance of this Agreement, the Recipient shall comply with all federal and state nondiscrimination laws, including but not limited to Oregon State Law and the Americans with Disabilities Act (ADA). In the event of the Recipient's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part.

9. Termination. If the Recipient fails to fulfill its obligations under this Agreement, the City may terminate this Agreement upon written notice to the Recipient specifying the reason for termination. The termination date shall be specified in the notice of termination.

10. Governing Law and Venue. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Oregon and the venue will be in Marion County, Oregon.

11. Assignment of Contract. The Recipient shall not assign this contract without the prior written consent of the City.

12. Entire Agreement. The Parties agree that this Agreement, including referenced exhibits, is the complete expression of the terms agreed to by the Parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the Parties

13. Severability. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

14. Taxes: It is recommended that the business owner consults with their tax consultant or attorney about financial implications or taxes that result from receiving these funds.

CITY OF DONALD

BUSINESS RECIPIENT

By: _____
Heidi Bell, City Manager

Signature: _____

Printed Name: _____

Date: _____

Title: _____

Date: _____

Business Tax ID#: _____

Exhibit 1

Donald COVID-19 Financial Business Assistance Program

A. Eligible Uses of Donald COVID-19 Financial Business Assistance Program Funds:

All expenses must have incurred after March 1, 2020 to be eligible.

- a. Payment of rent, lease or required monthly loan payments.
- b. Overdue utilities (electricity, phone, cable, internet): not to exceed three (3) months, up to \$1,000 total. Multiple utility payments may be combined. Requires utility company bills for all months requesting assistance.
- c. Expenses for compliance with COVID-19-related public health measures, including plexiglass barriers or other similar equipment and expenses reasonably necessary for the protection of public health (customers) and the health of owners and employees or to meet OSHA regulations and rules for workplace during COVID-19 Pandemic.
- d. Technology expenses related to adjusting work in response to COVID-19 including expense for setting up telework, remote work, and virtual work environments,
- e. Technology expenses for updating or building website or app for increased virtual customer interactions, or setting up a deliver or curbside pick-up program.
- f. Purchase of Oregon Health Authority's required signage for employers to have for employees and/or customers. Including but not limited to signs for social distancing and/or required face coverings.

B. Ineligible Uses of Program Funds:

- a. Political campaign contributions or donations.
- b. Charitable contributions or gifts.
- c. Bonus payments to Recipient owners, officers or employees, including "hazard pay".
- d. Payroll expenses including any employee(s) and owner wages or benefits.
- e. Paydown or payoff of debt by more than the monthly amount required by the underlying debt instrument.
- f. Prepayment of any expense which extends past the date of expiration of this agreement.
- g. Damages covered by insurance.
- h. Reimbursement to donors for donated items or services.
- i. Severance pays.
- j. Legal settlements.
- k. Any expense not considered an eligible business expense by the Department of the Treasury Internal Revenue Service.
- l. Taxes.

- m. Any employer covered portion of Unemployment costs.
- n. Any other expenses unless otherwise stated as an eligible expense.
- o. Eligibility questions should be directed to City Manager Heidi Bell, who can be reached at manager@donaldoregon.gov or 971-715-8571.

C. Additional Program Information and Criteria:

- a. Must be a business located inside of Donald city limits.
- b. Businesses can be either home occupation or brick and mortar.
- c. Application for funds are stated on the application and businesses can only select one type of assistance to apply for.
- d. **Funds must be used for needs that arose out of the COVID-19 Pandemic.** These include issues like; loss of income because business was closed, or reduced, which led to being unable to pay rent or utilities, had to buy supplies and materials in order to create barriers or sanitize spaces, paid for a service to sanitize space, increased fuel costs due to switching to a delivery of service, technology costs when switched services to a digital transmission, purchase of PPE for employee safety, etc.
- e. Awards are given out on a first come, first served basis until funds are gone, based on meeting the application criteria. Total relief funds available are \$15,000.
- f. It is advised that before applying for this Program that you consult your tax consultant or attorney for guidance on how this money could potentially affect the business's taxes.
- g. All expenses applied for must be after March 1, 2020.