



RE-IMAGINE OPPORTUNITY FUND

Where Challenges Meet Innovation

FORGIVABLE LOAN AGREEMENT

This forgivable loan agreement (“Contract”), dated as of the date the contract is fully executed, is between the City of Oregon City, acting through its Economic Development Department (“OCED”) and _____ (“Recipient”). This Contract becomes effective only when fully signed and approved as required by applicable law.

This Contract includes Exhibit A – Program Guidelines and Exhibit B – Implementation Plan of the Recipient. OCED is authorized to enter into loan agreements and make loans from proceeds of the Federal Cares Act.

SECTION 1 – FUNDING ASSISTANCE

OCED shall provide Recipient, and Recipient shall accept from OCED, a forgivable loan (“the Loan”) in an aggregate amount not to exceed \$_____

SECTION 2 – DISBURSEMENT

- A. Full Disbursement. Upon execution of this Contract and satisfaction of all conditions precedent, OCED shall disburse the Loan to Recipient.
- B. Conditions Precedent to Disbursement. OCED’s obligations are subject to the receipt of the following items, in form and substance satisfactory to OCED:
 - (1) This Contract duly signed by an authorized owner and/or officer of Recipient;
 - (2) Such other certificates, documents, opinions, and information as OCED may reasonably require; and

- (3) Documentation satisfactory to OCED that, in addition to the Loan, Recipient has available or has obtained binding commitments for all funds necessary to complete the program.

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

SECTION 3 – USE OF LOAN; CARES ACT REQUIREMENTS

The Recipient shall use the Grant/Loan only for the activities in compliance with guidelines In Exhibit A. OCED must ensure that any distribution or payment of the federal funds paid under this Contract, by means of any grant, subgrant, contract or other agreement between Recipient and another party include the requirement that such funds must be used solely in a manner that complies with the provisions of the CARES Act.

Recipient must obtain at least three bids for the purchase of durable type purchases such machinery and equipment, and for contracted work associated with construction and/or renovation of building whether inside or outside. If renting, Recipient must obtain written permission from the landlord to make any changes to the building and/or space being leased.

SECTION 4 – LOAN REPAYMENT; LOAN FORGIVENESS

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with its terms. The obligations of Recipient to make all payments is absolute and unconditional. Payments will be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed, or otherwise modified in any manner whatsoever.
- B. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction, or constructive eviction, the taking by eminent domain or destruction of or damage to the Program, commercial frustration of purpose, any change in the laws, rules, or regulations of the United States of America of the State of Oregon, or the City of Oregon City, nor any failure of OCED to perform any agreement, whether express or implied, or duty, liability, or obligation arising out of or connected with the Program or this Contract, or any rights of set off, recoupment, abatement, or counterclaim that Recipient might otherwise have against OCED or any party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- C. Loan Terms and Conditions. If converted to a Loan, it will be for a term of 5 years at a n

simple interest rate of 8.25%, collateralized against the personal guarantee of the owner of the business or against the assets of the nonprofit entity. For example, if \$60,000 grant funds provide are converted into a loan, one’s payment would resemble the following example:

Monthly Payment:	1,223.78
Principal Paid:	60,000.00
Interest Paid:	13,426.51
Total Paid:	73,426.51

SECTION 5 – COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify OCED of any adverse change in the activities, prospects, or condition (financial or otherwise) or Recipient or the Program related to the ability of Recipient to make all payments and perform all obligations required by this Contract.
- B. Federal Funds. OCED’s payments to Recipient under this forgivable loan will be paid by funds received by OCED from the United States Federal Government. Recipient, by signing this Contract, certifies neither it nor its employees, contractors, subcontractors or subrecipients who will perform the Project activities are currently employed by an agency or department of the federal government.
- C. Records Retention. Recipient will cooperate with OCED to provide all necessary financial information and records. Recipient will keep proper books of account and records on all activities associated with the forgivable loan, including, but limited to contractors’ contracts, bids for work to be conducted, receipts of purchases and other supporting financial and material documents. Recipient will maintain these books of account and records from the date of this Contract until five years after the Project completion or the date that all disputes, if any, arising under this Contract have resolved.
- D. Inspection. The Recipient shall permit OCED or its designee(s) at any reasonable time, to inspect and make copies of any accounts, books, and records related to the project. The Recipient shall supply any project-related information as OCED may reasonably require.
- E. Notice of Event of Default. The Recipient shall give OCED prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.
- F. Indemnity. To the extent authorized by law, Recipient shall defend, indemnify, save and hold harmless Oregon City Municipal Government, its officers, employees and agents

from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors, that is related to this initiative or project funded by this initiative.

SECTION 6 – REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OCED:

A. Organization and Authority.

(1) The Recipient has all necessary right, power, and authority under its organizational documents and applicable Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive funding for the project.

(2) This Contract has been duly executed by Recipient, and when executed by Oregon City Municipal Government, is legal, valid, and binding, and enforceable in accordance with their terms.

B. **Full Disclosure.** The Recipient has disclosed in writing to OCED all facts that materially adversely affect the Project, or the ability of Recipient to perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract, including Exhibit A, are integral to this Contract.

C. **Pending Litigation.** The Recipient has disclosed in writing to OCED all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting the Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project and/or the initiative or the ability of the Recipient to perform all obligations required by this Contract.

SECTION 7 – DEFAULT

Any of the following constitutes an "Event of Default":

A. **Payment Failure.** If these forgivable loan funds are not converted to a grant due to an Event of Default.

B. **Misleading Statement.** Any materially false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to the funding or project.

- C. Failure to Implement. If the Recipient fails to implement its approved plan associated with this initiative or provide misleading information regarding implementation, the grant funding will convert to a loan.
- D. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsection A through B of this section, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OCED, OCED may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 8 – REMEDIES

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

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

SECTION 9 – TERMINATION

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

- A. It is realized that there is an unanticipated or anticipated shortfall in available resources.
- B. OCED fails to receive sufficient funding, appropriations or other expenditure authorizations to allow OCED, in its reasonable discretion, to continue making payments under this Contract.
- C. There is a change in federal or state laws, rules, regulations or guidelines so that the initiative funded by this Contract is no longer eligible for funding.

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

SECTION 10 – MISCELLANEOUS

- A. No implied Waiver. No failure or delay on the part of OCED to exercise any right, power, or privilege under this Contract will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege under this Contract preclude any other or further exercise thereof the exercise of any other such right, power, or privilege.
- B. Notices. Any notices, reports, or other documents required by this Contract shall be sent by these parties by the United States Mail, by hand delivery, or by electron means. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight hours (48 hours) after mailing, unless sooner received.

Oregon City Economic Development Department
Attn: James Graham, Economic Development Manager
P.O Box 3040
625 Center Street
Oregon City, OR 97405

Recipient

- C. Amendments. This Contract may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties
- D. Severability. If any provision of this Contract will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.
- E. Successors and Assigns. This Contract will be binding upon and inure to the benefit of Oregon City, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights, obligations or any interest without prior written consent of OCED.
- F. Integration. This Contract (including all exhibits, schedules, or attachments) constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- G. No Third-Party Beneficiaries. Oregon City and the Recipient are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives or provides, or is intended to give or provide, to third

persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly describes ad intended beneficiaries of the terms of this Contract.

H. Survival. All provisions of this Contract that by their terms are intended to survive shall termination of this Contract.

I. Attorney Fees. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract will be entitled to recover from the other its reasonable attorney fees and costs and expenses at trial, in a bankruptcy, receivership or similar proceeding, and on appeal. Reasonable attorney fees shall not exceed the rate charged to Oregon City by its attorneys.

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

Recipient:

City of Oregon City

By: _____

Anthony J. Konkol, III
City Manager

By: _____

Date: _____

