



INTERGOVERNMENTAL AGREEMENT

This Agreement is made and entered into by and between the City of Tualatin, a municipality organized under ORS 221.110 to 221.230 hereinafter referred to as the City; and the State of Oregon, acting by and through the Oregon Commission for the Blind (OCB) Business Enterprise Program, a state agency hereinafter referred to as BEP; together hereinafter referred to as the Parties.

IGA Effective Date: 11/27/2023

City Contact Phone & Email:
Rachel Sykes, Public Works Director
(503) 691-3090
rsykes@tualatin.gov

BEP Contact Phone & Email:
Michael Wolff, Business Enterprise Interim Director
(971) 673-1588
Michael.wolff@state.or.us

RECITALS

PURPOSE: The purpose of this Agreement is to provide for mutual assistance and cooperation in the establishment, operation and maintenance of exclusive refreshment, concessions and vending services at the location(s) identified in Exhibit A.

AUTHORITY: This Agreement is entered into under the authority of [ORS 190.110](#) and Oregon Revised Statutes [346.510](#) et. seq. (the "Act").

BACKGROUND:

WHEREAS BEP is empowered to enter into cooperative agreements with other public and private agencies to provide services, programs and facilities for visually impaired individuals; and

WHEREAS City desires BEP's assistance and cooperation in the provision of the services for the convenience of staff and visitors at City's facilities as identified in [OAR 585-015-0005\(28\)](#); and

WHEREAS BEP's performance of such services is consistent, compatible and beneficial to its role as a state licensing agency under the Act, to provide opportunities for licensed vending facility managers to operate the services in public buildings or properties.

AGREEMENT

THEREFORE, in consideration of the mutual covenants contained herein, City and BEP hereby agree as follows:

1. **Recitals:** The recitals above are incorporated herein as if fully set forth.
2. **Term:** This Agreement shall commence on 11/27/2023 and, as provided for under the provisions of ORS 190.020, continue on thereafter from year to year unless terminated earlier in accordance with Article 15 of this Agreement, for a period not to exceed 5 years. At the end of the initial Term, the parties, by written agreement, may amend specific articles.
3. **Vending Facilities to be provided:** Under [ORS 346.510-570](#) BEP shall have the exclusive right to operate the services in locations identified in Exhibit A. The services will be operated in such a way as to comply with all federal, state and local laws and regulations. BEP may assign vending facility managers or subcontract with a professional service company to operate the services required under this Agreement. BEP shall maintain a record of all service calls and provide these records to City upon request.
4. **Space and Utilities:** City shall furnish the BEP adequate space to operate the services specified in Exhibit A. City shall also provide the necessary utility services, including, but not limited to, electrical power supply/connections and water outlets required for installation, maintenance and operation of the services. City shall not charge the BEP for such utility costs or for the normal cleaning, maintenance, and repair of the building and structure adjacent to the service areas.
5. **Vending Machines:** Vending machines provided at the City's locations are as identified in Exhibit A. The Parties by mutual consent in writing shall approve any substantial changes in location or arrangement of vending machines and/or services, including the addition of other machines, locations or equipment.
 - a. **Installation, Service and Repairs:** At its own expense (excepting those costs described in Item 4 above), BEP shall install, service, fill and maintain the vending machines located at the Agency's locations in accordance with the prevailing standards in the vending machine industry. BEP shall restock, clean and check the machines for needed repairs ("service") on a regular basis. BEP shall post a notice on each of the vending machines stating that the machine is operated by or for the Oregon Commission for the Blind, Business Enterprise Program. The notice shall include a telephone number for reporting malfunctions or requesting repairs. BEP shall respond to any reported malfunctions within 24 hours and arrange for necessary repairs as soon as possible.
 - b. **Products Dispensed:** The products dispensed by the vending machines shall at all times be nutritionally balanced, fresh and wholesome and of good quality. BEP shall remove all products promptly before their labeled pull dates and before the products become stale or spoiled.
6. **Payments and Proceeds:** BEP shall establish sale prices for the services and products at current market value, and shall be entitled to all revenues and proceeds from the operation of the vending machines except as provided below. BEP shall be responsible for all state and local taxes, licenses, permits, authorizations and any other state and local requirements with regard to its ownership,

use or operation of vending machines and provision of services under this Agreement.

7. **Access to Property:** The Agency shall allow BEP employees, licensed vending facility managers, employees of licensed vending facility managers and subcontracted company employees adequate access to the locations where services are provided. All such individuals entering Agency premises shall comply with the applicable Agency policies and procedures.

8. **Notification of Misconduct:** The City shall exercise reasonable efforts to notify the BEP of any alleged misconduct or mismanagement by an individual providing the services, or any other dissatisfaction with the BEP under this Agreement. City may recommend a change of personnel providing the services, and if so shall provide the BEP written documentation containing the rationale for recommended changes, which shall not be based upon prohibited discriminatory treatment. The BEP will respond to the City in writing within fifteen (15) business days from the date the BEP receives this request. If the City is dissatisfied with the BEP response, an informal meeting will be held between the parties. Both parties will use best faith efforts to resolve any disputes that may arise.

9. **Assignment/Subcontractors:** OCB may assign this Agreement, in whole or in part, or any right or obligation hereunder, to a vending facility manager or professional service company subcontractor and provide notice to agency as soon as possible. BEP shall notify City of any manager or subcontractor acting on its behalf, including names, addresses, and telephone numbers. BEP will obligate each vending facility manager or subcontractor that it engages to operate the services at City to act in accordance with the provisions of this Agreement.

10. **Indemnification; Insurance:** Subject to the limitations of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act ([ORS 30.260 through 30.300](#)), OCB shall indemnify, within the limits of and subject to the restrictions in the Tort Claims Act, Agency, its officers, employees and agents from and against any liability for personal injury or damage to life or property arising from the BEP's intentional misconduct, or reckless or negligent acts or omissions under this Agreement.

Subject to the limitations of Article XI, Section 9 of the Oregon Constitution and the Oregon Tort Claims Act ([ORS 30.260 through 30.300](#)), City shall indemnify, within the limits of and subject to the restrictions in the Tort Claims Act, to the extent permitted by law, BEP and its officers, employees and agents from and against any liability for personal injury or damage to life or property arising from the City's intentional misconduct, or reckless or negligent acts or omissions under this Agreement.

Each party shall be responsible exclusively with respect to their employees, for providing for employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and contributions to the Public Employees Retirement System. If either BEP or Agency employs subject workers as defined in [ORS 656.027](#), the party 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\(2\)](#). BEP and Agency shall require and ensure that each of its subcontractors complies with these requirements.

11. **Losses:** Except to the extent any such loss shall be caused in whole or in part by the City's intentional misconduct, or reckless or negligent acts or omissions or material breach under this Agreement, BEP assumes liability for all losses involved in the operation of the services or equipment provided by BEP due to theft, fire, accident, disruption of utility services, vandalism, spoilage, or other similar events.

12. **Representations and Warranties:** The Parties represent and warrant that it has full power and authority to enter into agreements of the type contemplated herein, and that all action on their part necessary for the authorization, execution, delivery and performance of this Agreement has been duly

taken.

13. **Compliance with Applicable Law:** The Parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work performed under this Agreement.

14. **Force Majeure:** Neither party shall be held responsible to the other for any delay or default caused by fire, riot, civil commotion, war, act of God, or any other like condition or event which is beyond its reasonable control and which by the exercise of reasonable diligence it is unable to prevent.

15. **Termination:** Either party may terminate this Agreement, upon thirty (30) days written notice, or at such later date as the party may establish in such notice, (i) for breach of any material provision by the other party if the breach is not remedied within fifteen (15) calendar days following provision of notice by the aggrieved party; (ii) in the event the party determines, in the exercise of its reasonable discretion, that the Oregon State Legislature or Tualatin City Council has failed to approve funding, appropriations, limitations, allotment or other expenditure authority at levels sufficient to perform its obligations under the Agreement; or (iii) for convenience within the first one hundred and eighty (180) days of the term of this Agreement. For the purposes of this Agreement, a "material breach" shall include, but is not limited to, any failure by BEP to stock the Micro Market in accordance with the guidelines outlined in Exhibit C. Any such termination shall not affect obligations that accrued prior to the date of the notice and for which funding is lawfully available. In addition to the above, the Agreement may be terminated upon mutual agreement of the Parties in writing with ninety (90) days' prior written notice to the other party. Neither party shall incur any new obligations or enter into any new contracts for the terminated portion of the Agreement after the effective date of such termination, and shall cancel as many obligations and contracts as possible.

16. **Administration; Notices:** Except as otherwise provided in this Agreement, any communications between the parties or notices to be given under this Agreement shall be given in writing by personal delivery, facsimile transmission, or by mailing the same, postage prepaid, to the party's Authorized Representative as follows:

Oregon Commission for the Blind ("OCB")
Attention: Business Enterprise Director
535 SE 12th Avenue, Portland, OR 97214
Telephone: 971-673-1588
FAX: 503-234-7468

Or to such address or fax number as either party may hereafter indicate.

Any communication or notice properly addressed and mailed shall be deemed received five (5) calendar days after mailing. Any communication or notice delivered via fax shall be deemed received upon confirmation by the transmitting machine of successful transmittal. Personal delivery shall be effective upon delivery into the possession of the party's authorized representative, or delivery into the possession of any employee at the party's address authorized to accept deliveries on behalf of the party.

17. **Waiver; Amendment:** The Parties may agree to amend this Agreement to the extent permitted by applicable statutes and administrative rules. No amendment shall be effective unless it is in writing and signed by the parties and unless all approvals required by applicable law have been obtained before becoming effective. No delay or omission to exercise any right, power or remedy accruing to either party upon any breach or default by the other shall impair any such right, power or remedy. Any waiver of breach or default must be in writing and shall be effective only to the extent specifically set forth in the writing. All

remedies shall be cumulative and not alternative. No provision of the Agreement may be amended, waived, discharged or terminated orally.

18. **Independent Contractor:** BEP and City are, as to each other, independent contractors. This Agreement is not intended to, and shall not be construed to, create a partnership, joint venture or master-servant relationship between BEP and City, nor does the Agreement give either party the power to act as a partner, joint venture or agent on behalf of the other. Nothing in this Agreement shall be construed to create a master-servant, principal-agent, or employer-employee relationship between BEP and its assigned vending facility managers and subcontractors or between Agency and the managers and subcontractors who provide services under the Agreement.

19. **No Third Party Beneficiaries:** Nothing contained in this Agreement is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly or otherwise, to third persons, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the Agreement.

20. **Non-Discrimination:** The Parties agree to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

21. **Funds Available:** The Parties certify at the time of this Agreement that sufficient funds are available and authorized for expenditure to finance the costs of this Agreement. Continuation of this Agreement after the current budget period is contingent on legislative approval of funding.

22. **Integration:** This Agreement, together with its exhibits, if any, and matter incorporated by reference, contains the entire agreement between the parties on the subject matter thereof, and no statements made by any party or agent thereof not contained therein shall be valid or binding.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the date hereinabove written.

STATE OF OREGON, acting by and through the Oregon Commission for the Blind (BEP)

By:

X: _____ Date: _____
Michael Wolff | Interim Director, Business Enterprise Program

Agency Name

By:

X: _____ Date: _____
Sherilyn Lombos | City Manager, City of Tualatin

EXHIBIT A

Vending Machine Type & Location

Tualatin City Services
10699 SW Herman Rd., Tualatin

(1) Micro Market – Employee Break Room