

EXHIBIT A – TDC RESOLUTION NO. 620-20

**INTERGOVERNMENTAL AGREEMENT BETWEEN
WASHINGTON COUNTY AND TUALATIN DEVELOPMENT COMMISSION**
For Reimbursement Program and Small Business Assistance

This INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered between WASHINGTON COUNTY, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "County", and Tualatin Development Commission, an Oregon urban renewal agency formed under the laws of the State of Oregon, acting by and through its Board of Commissioners, hereinafter referred to as “Commission.” County and City may be jointly referred to herein as the “Parties” or individually as a “Party.”

RECITALS

1. WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and
2. WHEREAS, on March 8, 2020 the Governor of Oregon declared an emergency under ORS 401.165 *et. seq.* due to the public health threat posed by the novel infectious coronavirus disease (COVID-19); and
3. WHEREAS, on March 11, 2020, COVID-19, which spreads person-to-person through coughing, sneezing and close personal contact, was declared a pandemic by the World Health Organization; and
4. WHEREAS on March 13, 2020 the President of the United States declared the COVID-19 outbreak a national emergency; and
5. WHEREAS on March 23, 2020, Oregon Governor Kate Brown issued Executive Order 20-12 (EO 20-12) which, among other things, ordered closure and prohibited operation of a wide range of businesses, restricted the operations of restaurants, bars, brew pubs, wine bars, cafes, food courts and coffee shops, and required social distancing for other retail businesses; and
6. WHEREAS, on March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law and established the \$150 billion Coronavirus Relief Fund (Fund) from which the U.S. Department of the Treasury made payments to eligible units of local government, including the County; and
7. WHEREAS, the County received a payment from the Fund which, subject to the requirements of the CARES Act, can be used to reimburse necessary expenses associated with the provision of economic support for small businesses; and

8. WHEREAS, the City, in response to EO 20-12 and related state executive orders and local emergency declaration concerning the COVID-19 public health threat, initiated an emergency small business grant program to provide immediate rent or mortgage relief to the small, independent businesses within its jurisdiction; and
9. WHEREAS, on June 2, 2020, the Washington County Board of Commissioners approved the distribution of \$2,500,000.00 from the County's allocation of the Fund (Small Business Assistance funds) to reimburse cities within Washington County for emergency assistance grants made to small business; and
10. WHEREAS the Commission has requested a \$252,000.00 distribution from the Small Business Assistance funds to cover expenses already incurred or to be incurred in the form of emergency assistance grants to small business within the Commission's jurisdictional boundaries; and
11. WHEREAS, the County desires to provide the Commission a portion of the Small Business Assistance funds to reimburse the Commission for unbudgeted expenses for emergency assistance grants and other small business assistance needs made necessary by the COVID-19 public health threat;

AGREEMENT

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals and in consideration of the terms, conditions and covenants set forth below, the parties agree as follows:

Article 1 COUNTY OBLIGATIONS

- 1.1 County shall distribute \$252,000.00 from the Small Business Assistance funds within fourteen days of receipt of invoice for actual incurred expenses up to the same amount from Commission.

Article 2 COMMISSION OBLIGATIONS

- 2.1 Commission may invoice the County for up to \$252,000.00 of the Small Business Assistance funds for actually incurred eligible expenditures.
- 2.2 Commission will ensure all expenditures covered by the Small Business Assistance funds will be for programs and program costs that comply with the CARES Act. Commission understands and agrees that while a broad range of activities, services and programs may be authorized under the CARES Act, the County recommends Commission only cover expenditures tailored to assist small businesses in need of such assistance as allowed by the CARES Act. In any case, the Commission agrees not to cover its own expenditures that may otherwise be eligible expenditures under the CARES Act with the Small Business Assistance funds.

- 2.3 Commission will ensure the monies provided from the Small Business Assistance funds:
 - 2.3.1 Cover only and exclusively those expenditures and costs already incurred or to be incurred and:
 - 2.3.2 Are necessary expenditures incurred due to the public health emergency with respect to the COVID-19 within the meaning the CARES Act; and
 - 2.3.3 Were not accounted for in the Commission's most recently approved budgets as of March 27, 2020; and
 - 2.3.4 Were incurred during the period that begins March 8, 2020 and ends on July 31, 2020.
- 2.4 Commission will not use any of the Small Business Assistance funds provided by the County as a revenue replacement for lower than expected tax or other revenue collections or for any other purpose not allowed by the CARES Act.
- 2.5 Commission will ensure all use of the Small Business Assistance funds will adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. Commission will review the guidance established by the U.S. Department of Treasury and will warrant that all expenditures have met the required guidance.
- 2.6 Commission will not use the Small Business Assistance funds for expenditures for which the Commission has already received any other emergency COVID-19 supplemental funding for the same expenditure.
- 2.7 In the event Commission uses the Small Business Assistance funds to reimburse expenditures for a qualifying small business assistance program or expense and subsequently receives or additional emergency COVID-19 supplemental funding to reimburse the Commission for the same qualified expended small business assistance program or expense, the Commission will return to the County an amount equal to the Small Business Assistance funds the Commission used to reimburse expenditures for the same program or expense. The return of Small Business Assistance funds from the Commission to the County will occur within thirty (30) days of receipt of the additional supplemental funds.
- 2.8 Commission will retain all necessary documentation of all uses of the Small Business Assistance funds including but not limited to invoices and receipts in a manner consistent with §200.333 *Retention requirements for records of 2 CFR 2 Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Such documentation shall be promptly produced to the County upon request and may be subject to audit by the County or County's authorized agent.

- 2.9 Commission will comply with all terms in Attachment R, Federal Grant Funds, 2 CFR Part 200, Appendix II.

Article 3 GENERAL PROVISIONS

3.1 LAWS OF OREGON

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.

3.2 DEFAULT

Time is of the essence in the performance of the Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

3.3 INDEMNIFICATION

This Agreement is for the benefit of the parties only. Commission agrees to indemnify and hold harmless the County, and its elected officials, directors, officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). Commission shall give County prompt written notice of any action or suit filed or any claim made against the County that may result in litigation in any way related to this Agreement. County retains the right, in its discretion, to defend any action with Counsel of its choosing.

3.4 INSURANCE

Commission shall maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 through 30.274.

3.5 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both Parties. The Parties agree that this

Agreement may require modification as additional guidance becomes available.

3.6 DISBURSEMENTS REMAIN SUBJECT TO RECOVERY

All disbursements and payments under this Agreement, remain subject to recovery from Commission in accordance with the following:

i. Notice of Underexpenditure, Overexpenditure, or Misexpenditure.

If County finds there has been an underexpenditure, overexpenditure or misexpenditure of moneys disbursed under this Agreement, County shall provide Commission with written notice thereof, with a detailed spreadsheet providing supporting data of an underexpenditure, overexpenditure or misexpenditure, and County and Commission shall engage in the process described in the Recovery of Underexpenditure, Overexpenditure or Misexpenditure section below.

ii. Recovery of Underexpenditure, Overexpenditure or Misexpenditure.

(a) Commission's Response. Commission shall have 90 calendar days from the effective date of the notice of underexpenditure, overexpenditure or misexpenditure or from the date of receipt of the notice, whichever is later, to pay County in full or notify County that it wishes to engage in the appeals process set forth in the Appeals Process section below. If Commission fails to respond within that 90 calendar-day time period, Commission shall promptly pay the noticed underexpenditure, overexpenditure or misexpenditure.

(b) Appeals Process. Upon receipt of the final notice, if Commission notifies County that it wishes to engage in the Appeals Process, Commission and County shall engage in non-binding discussions to give the Commission an opportunity to present reasons why it believes that there was no underexpenditure, overexpenditure or misexpenditure, or that the amount of the underexpenditure, overexpenditure or misexpenditure was different than the amount identified by County, and to give County the opportunity to reconsider its notice. Commission and County may negotiate an appropriate apportionment of responsibility for the repayment of an underexpenditure, overexpenditure or misexpenditure. At Commission request, County will meet and negotiate with Commission in good faith concerning appropriate apportionment of responsibility for repayment of an underexpenditure, overexpenditure or misexpenditure. In determining an appropriate apportionment of responsibility, Commission and County may consider any relevant factors. An example of a relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure. If County and Commission reach agreement on the amount owed to County, Commission shall promptly

repay that amount to County by issuing payment to County. If County and Commission are unable to agree to whether there has been an underexpenditure, overexpenditure or misexpenditure or as to the amount owed, the parties may agree to consider further appropriate dispute resolution processes, including mediation and arbitration.

3.7 DISPUTE RESOLUTION

The Parties shall attempt to informally resolve any dispute concerning any Party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

3.8 REMEDIES

Subject to the provisions in paragraph 3.6 and 3.7, any Party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The Parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

3.9 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed on or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

3.10 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

3.11 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

Article 5 TERM OF AGREEMENT and SURVIVAL

- 5.1 This Agreement becomes effective on the last date signed below and shall terminate on **August 31**, 2020, unless extended by mutual written consent of the Parties.
- 5.2 Commission Obligations 2.7, 2.8 and 2.9 and General Provisions 3.3, 3.6 and 3.8 shall survive termination or expiration of this Agreement.

DATED this _____ day of _____, 2020.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

WASHINGTON COUNTY, OREGON

**TUALATIN DEVELOPMENT
COMMISSION, OREGON**

CAO

Administrator

DATE

DATE

RECORDING SECRETARY

CITY RECORDER

APPROVED AS TO FORM:

Cortney Duke-Driessen
Sr. Assistant County Counsel

Sean T. Brady
Commission Attorney

DATE

DATE

DRAFT