

EXHIBIT A - RESOLUTION NO. 5513-20

**COVID-19 EMERGENCY BUSINESS ASSISTANCE PROGRAM
FORGIVABLE LOAN AGREEMENT**

OBDD Contract Number C2020240

This forgivable loan agreement (“Contract”), dated as of the date the Contract is fully executed, is between the State of Oregon, acting through its Business Development Department (“OBDD”) and the City of Tualatin (“Recipient”) for capitalizing a COVID-19 Emergency Business Assistance Program sponsored by Recipient and described in Exhibit A (“Program”). This Contract becomes effective only when fully signed and approved as required by applicable law. Unless extended or terminated earlier in accordance with its terms, this Agreement expires 45 days after the Program Completion Deadline. Agreement termination does not extinguish or prejudice OBDD’s right to enforce this Agreement with respect to any default by Recipient that has not been cured.

This Contract includes Exhibit A - Program Description and Requirements.

Pursuant to ORS 285B.266 and OAR Ch. 123, Div. 90, OBDD is authorized to enter into loan agreements and make loans from the Strategic Reserve Fund, including this Contract.

SECTION 1 - FUNDING ASSISTANCE

The OBDD shall provide Recipient, and Recipient shall accept from OBDD, a forgivable loan (the “Loan”) in an aggregate amount not to exceed \$35,000.

SECTION 2 - DISBURSEMENT

- A. Full Disbursement. Upon execution of this Contract and satisfaction of all conditions precedent, OBDD shall disburse the full Loan to Recipient.
- B. Conditions Precedent to Disbursement. The OBDD’s obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its attorneys:
- (1) This Contract duly signed by an authorized officer of Recipient; and
 - (2) Such other certificates, documents, opinions and information as OBDD may reasonably require.
 - (3) Documentation satisfactory to OBDD that, in addition to the Loan, Recipient has available or has obtained binding commitments for all funds necessary to complete the Program.

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

SECTION 3 - USE OF LOAN

The Recipient shall use the Loan only for the activities described in Exhibit A. The Recipient may not use the Loan to cover costs scheduled to be paid for by other financing for the Program from another State of Oregon agency or any third party, or to retire any Recipient debt.

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 obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. 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 or of the State of Oregon or any political subdivision or governmental authority, nor any failure of OBDD to perform any agreement, whether express or implied, or any 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 OBDD or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. No Interest. The Loan bears no interest.
- C. Loan Forgiveness. OBDD shall forgive repayment and cancel the Loan by notice to Recipient, as soon as it determines that all of the following conditions are met:
- (1) Recipient has completed the Program no later than the Program Completion Deadline, which date is 45 days after receipt of the Loan.
 - (2) No Event of Default has occurred and continues.
 - (3) No later than 30 days after the Program Completion Deadline, Recipient submits the reporting required in Exhibit A, in form and substance satisfactory to OBDD.
- D. Partial Loan Forgiveness; Maturity Date. If Recipient is unable to award grants to businesses (including matching funds) as required by this Contract, equal to the full amount of the Loan, OBDD will forgive that portion of the Loan meeting all the conditions in Subsection C above and notify Recipient in writing. Recipient shall pay all unforgiven Loan principal to OBDD not later than 30 days after receiving notice of partial forgiveness, unless otherwise provided by OBDD in writing.

SECTION 5 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Program related to the ability of Recipient to make all payments and perform all obligations required by this Contract.
- B. Public Notification. Recipient will reasonably acknowledge in some public fashion, such as in public statements, that the Program was funded in part with State of Oregon General Funds and Lottery Funds administered by the Oregon Business Development Department.
- C. Compliance with Laws. Recipient will comply with the requirements of all applicable federal, state and local laws, rules, regulations, and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings.

- D. Records Retention. Recipient will keep proper books of account and records on all activities associated with the Loan, including, but not limited to grant awards and payments, instruments, agreements and other supporting financial records documenting the use of the Loan, including all grant applications and supplemental documentation provided by business applicants. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles and will retain these books of account and records from the later of the date of this Contract until three years after the Program Completion Deadline or the date that all disputes, if any, arising under this Contract have been resolved.
- E. Inspection. The Recipient shall permit OBDD, and any party designated by OBDD, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives, at any reasonable time, to inspect and make copies of any accounts, books and records related to the Program. The Recipient shall supply any Program-related information as OBDD may reasonably require.
- F. Notice of Event of Default. The Recipient shall give OBDD 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.
- G. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and 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 Program.

SECTION 6 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

- A. Organization and Authority.
- (1) The Recipient is a municipality, validly organized and existing under the laws of the State of Oregon.
 - (2) 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 Program.
 - (3) This Contract has been authorized by an ordinance, order or resolution of Recipient's governing body if required by its organizational documents or applicable law.
 - (4) This Contract has been duly executed by Recipient, and when executed by OBDD, is legal, valid and binding, and enforceable in accordance with their terms.
- B. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Program, 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, is true and accurate in all respects.

- C. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Program or the ability of Recipient to perform all obligations required by this Contract.
- D. Governmental Consent. The Recipient has obtained or will obtain all approvals, notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the undertaking and completion of the Program.

SECTION 7 - DEFAULT

Any of the following constitutes an “Event of Default”:

- A. Payment Failure. The Recipient fails to make any Loan payment when due.
- B. Misleading Statement. Any material false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Loan or the Program.
- C. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections 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 OBDD. OBDD 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, OBDD may pursue any remedies available under this Contract, at law or in equity. Such remedies include, but are not limited to, termination of OBDD’s obligations to make the Loan or further disbursements, return of all or a portion of the Loan amount, and declaration of ineligibility for the receipt of future awards from OBDD. OBDD may also recover all or a portion of the outstanding balance due under the Loan from Recipient by deducting the amount from any payment due to Recipient from the State of Oregon 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, OBDD demands return of all or a portion of the Loan amount, Recipient shall pay the amount upon OBDD’s demand. OBDD reserves the right to turn over any unpaid debt from this Contract to the Oregon Department of Revenue or 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 OBDD 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 OBDD’s obligations.

SECTION 9 - TERMINATION

OBDD may terminate this Contract with notice to Recipient under any of the following circumstances:

- A. The Oregon Department of Administrative Services notifies OBDD of an anticipated shortfall in available revenues.
- B. OBDD fails to receive sufficient funding, appropriations or other expenditure authorizations to allow OBDD, 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 Program 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 OBDD 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 or the exercise of any other such right, power, or privilege.
- B. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- C. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or OBDD at the addresses listed in Exhibit A, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) 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 or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

- D. Amendments. This Contract may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.
- E. 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.
- F. Successors and Assigns. This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights, obligations or any interest without the prior written consent of OBDD.
- G. Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.
- H. 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.
- I. No Third Party Beneficiaries. OBDD and 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 described as intended beneficiaries of the terms of this Contract.
- J. Survival. All provisions of this Contract that by their terms are intended to survive shall survive termination of this Contract.
- K. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- L. 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 OBDD by its attorneys.
- M. Promotional Use of Recipient Information. Recipient agrees that OBDD may use Recipient and information provided to the OBDD by Recipient in the promotion of OBDD's programs and services.
- N. Public Records. OBDD's obligations under this Contract are subject to the Oregon Public Records Laws.

SIGNATURE PAGE FOLLOWS

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.



STATE OF OREGON
acting by and through its
Business Development Department



City of Tualatin
CITY OF TUALATIN

By: _____
Chris Cummings, Interim Director
Business Oregon

By: _____
Sherilyn Lombos, City Manager

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Wendy Johnson per email dated 8 June 2020

Wendy Johnson, Senior Assistant Attorney General

EXHIBIT A - PROGRAM DESCRIPTION AND REQUIREMENTS

OBDD

State of Oregon, acting by and through its
Business Development Department,
775 Summer Street NE Suite 200
Salem OR 97301-1280

Contract Administrator: Becky Bryant

Telephone: 541-297-3682

Email: becky.a.bryant@oregon.gov

Recipient

City of Tualatin

18880 SW Martinazzi Avenue
Tualatin OR 97062

Contact: Jonathan Taylor, Economic Development
Manager

Telephone: 503-691-3049

Email: jtaylor@tualatin.gov

Program Requirements

Recipient will operate a COVID-19 Emergency Business Assistance Fund that provides one-time-only grants to individual businesses affected by the COVID-19 epidemic, as described below. OBDD acknowledges the City of Tualatin will use previously expended funds of the Tualatin Development Commission, a separate municipal corporation, as the City's Program match for the Loan amount, in at least a 1:1 ratio.

Eligible Business Applicants

1. Businesses must be adversely affected economically in either one of the following two categories:
 - Those for-profit and non-profit (limited to 501(c)(3) corporations) businesses that were prohibited from operation as directed by the Governor of Oregon's Executive Order No. 20-12.
 - Those eligible for-profit businesses that can demonstrate a one month decline in revenue greater than 50% in the month of March 2020 or April 2020 as compared against sales in the month of January 2020 or February 2020. Those 501(c)(3) non-profit businesses that can demonstrate a decline in revenue greater than 50% across the months of March 2020 and April 2020 as compared against the same period of time in 2019.
2. Businesses must have 25 or fewer employees.
3. At the time of a grant award from Recipient's Program, businesses must have been unable to access federal CARES Act funds or other federal funds including:
 - Small Business Administration's Paycheck Protection Program (PPP);
 - Economic Injury Disaster Loan Emergency Advance program (EIDL); or
 - Other federal programs for emergency pandemic funding.

Ineligible Business Applicants

Ineligible applicants include the following categories of businesses:

1. Passive real estate holding companies and others holding passive investments.
2. Non-profit entities that do not have federal 501(c)(3) status.
3. Businesses that fail to certify they are not delinquent on federal, state or local taxes that were due before 1 April 2020.
4. Businesses that do not certify they are in compliance and will comply with all federal, state and local laws and regulations.
5. Businesses not headquartered and with principal operations in Oregon.

6. Businesses not registered to do business in Oregon (Secretary of State Business Registry verification) if such registration is required.

Program Access

It is intended that these state funds are equally accessible to all Oregonians, so Recipient will conduct a robust marketing program that reaches out locally to businesses owned by members of historically disadvantaged population groups (Asian, Black, Hispanic, Native American, and Women Owned Businesses) at least to the extent described in its proposal to OBDD, and must:

- Utilize program marketing materials and application materials provided by OBDD and made available in languages that are representative of the local population.
- Conduct a stepped marketing program that reaches out and markets to members of historically disadvantaged population groups in advance of marketing to the general public.

Business Applications and Support Documentation

In general, Recipient will, applying its best judgment in individual cases, ensure that businesses:

- Self-certify they have not received CARES Act PPP or SBA EIDL assistance as of the date of application.
- Demonstrate:
 - That they were prohibited from operation as directed by Executive Order No. 20-12; or
 - That they had a sales or revenue decrease of 50% or more in the month of March or April 2020, as compared against the sales or revenues of January or February 2020, or for non-profit business, as compared against the same period in 2019.
- Demonstrate they are headquartered and have principal operations in Oregon.
- Self-certify they are not subject to any of the ineligibility criteria.
- Self-certify that the business and its operations are, and will, remain compliant with all local, state and federal laws.
- Provide business, financial and ownership information sufficient to determine and verify eligibility.

Recipient will use a standard Grant Application Form for businesses, including a statement that applicant agrees that State may pursue collection efforts for fraudulent or ineligible grant awards, as supplied by OBDD in multiple languages.

Grant Award Amounts

Awards to eligible businesses will be made as a grant. The amount of the grant will be the greater of two figures, subject to an applicant's ability and choice to provide documentation to support the second figure: the first based on the number of employees before the COVID-19 crisis (as of 29 February 2020); or the second based on the documented amount of fixed operating expenses for the 60 day period of 1 January through 29 February 2020:

- 0-5 employees
 - \$2,500, or
 - 60-day fixed expenses up to a maximum of \$5,000.

- 6-10 employees
 - \$5,000, or
 - 60-day fixed expenses up to a maximum of \$10,000.
- 11-15 employees
 - \$7,500, or
 - 60-day fixed expenses up to a maximum of \$15,000.
- 16-20 employees
 - \$10,000, or
 - 60-day fixed expenses up to a maximum of \$20,000.
- 20-25 employees
 - \$12,500, or
 - 60-day fixed expenses up to a maximum of \$25,000.

Not less than 50% of all Recipient's awards must be made to Sole Proprietor owners (with or without other employees).

Review of Applications

Recipient must confirm that all information and certifications provided by business applicants meet all Program requirements, including but not limited to:

- Demonstrate:
 - That the business applicant was prohibited from operation as directed by Executive Order No. 20-12; or
 - That the business applicant had a sales or revenue decrease of 50% or more in the month of March or April 2020, as compared against the sales or revenues of January or February 2020, or for non-profit business, as compared against the same period in 2019.
- Demonstrate that the business applicant is headquartered and with principal operations in Oregon.
- Provide sufficient documentation of employee head count.

Reporting of Awards

To assist in preventing multiple grants to any business, Recipient must send notification of every award to the OBDD Contract Administrator no later than 24 hours after making the award decision, utilizing a Pre-award report form provided by OBDD.

Within 30 days of fully deploying the Loan, or 30 days after the Project Completion Deadline, whichever occurs first, Recipient will deliver a final report on the Program and information on the grant recipients on a form provided by OBDD, which will include but is not limited to:

- Number of applications received
- A listing of the direct costs incurred in the administration of the Program (payroll, marketing, et cetera)

- Number of awards made
 - Awards by #, \$ and % of allocation by voluntary reported demographic information
 - Awards by #, \$, and % of allocation by regions as defined by OBDD (i.e., Central, Coastal, Eastern, Portland, Southern, and Valley)
 - Award by #, \$, and % of allocation by company size / number of employees (0-5, 6-10, et cetera)
 - Award by #, \$ and % of allocation to sole proprietors
 - Total amount of Recipient's matching funds applied to awards made under the Program, by \$ and % match to the Loan.
- Individual business grant recipient data
 - Name of company
 - Employer Identification Number (EIN)
 - Oregon Business Identification Number (BIN)
 - Address of company
 - NAICS industry code
 - Amount of award
 - Legal business entity type
 - # of employees as of 29 February 2020
 - Reported # of jobs retained due to the award
 - For owners of businesses:
 - First and last name
 - Percentage of ownership
 - Demographics as reported in a demographic questionnaire for all owners with 20% or more ownership.
- A certification by Recipient that no Loan proceeds were used to retire any of Recipient's debt.

Tax Responsibility

Recipient is responsible for all federal or state taxes applicable to any portion of the Loan that is forgiven. Recipient is responsible to administer all federal or state tax requirements applicable to grant awards, including delivery of IRS Form 1099-G to grant recipients.

Program Completion Deadline

Recipient must complete grant awards to eligible businesses no later than the Program Completion Deadline. If Recipient is unable to complete grant awards to businesses (including matching funds) in its aggregate Loan amount by the Program Completion Deadline, Recipient shall return all unforgiven Loan principal to OBDD as provided by Section 4 of the Contract.