

SAMPLE

CONTRACT BETWEEN THE CITY OF MCMINNVILLE

And

{Applicant – Name, Business Name and Property Address}

FOR THE USE OF THE BUSINESS ASSISTANCE: WORKFORCE RECRUITMENT AND RETENTION GRANT FUNDS

THIS AGREEMENT (“Agreement”_ entered on **{Date}** by and between the City of McMinnville’s (City) and, **{Applicant – Name, Business Name and Property Address}**

WHEREAS, the City has established the Business Assistance Grants for Workforce Recruitment and Retention Program to address the ongoing workforce issues related to the impacts of the COVID-19 pandemic. The Grant will provide American Rescue Plan Act funds to businesses within the McMinnville city limits to invest in recruitment and retention programs that entice employees back into the workforce and develop loyalty for employees to stay; and

WHEREAS, the City has determined that this grant is to support workforce recruitment and retention due the impacts of ongoing issues related to COVID -19; and

WHEREAS, the Applicant is authorized to carry out a workforce recruitment and retention program at **{Address}**, which is within the McMinnville city limits, and has submitted an application (which is incorporated into this agreement) and has requested approximately **{Amount of Award}** in grant funds from the City; and

WHEREAS, the City has determined that Applicant has meet all of the conditions necessary for the requested funds;

NOW, THEREFORE, it is agreed between the City and Applicant that:

I. SCOPE OF SERVICE

A. Activities

Applicant agrees to participate in the Business Assistance Grant Program and the City agrees to provide a grant upon terms and conditions as set forth in this Agreement. Applicant will receive a grant of **{Amount of Award}** through the Business Assistance Grant program per the decision of the City’s review committee on **{Date}**.

B. Scope of Work

This contract pertains to the Scope of Work in Attachment A as outlined in the

Applicant's application in Attachment B.

{Describe the scope of work}

C. Special Contingencies:

Contingency for Funds Payback:

Applicant agrees to refund to the City the full amount of the grants under this contract if the Applicant is not able to execute the program as described in the scope of work.

Tax and Employment Implications:

The City has not made any representations regarding the tax consequences and the employment laws of Applicant's receipt of grant proceeds. Applicant shall be responsible for determining the tax and employment law consequences upon Applicant of the grant proceeds with their tax advisor(s).

D. Ineligible Expenses

The City will not reimburse Applicant for any labor, costs or expenses incurred outside of the approved scope of work as described in Paragraph 1.B of this contract.

E. Performance Monitoring

The City will monitor the performance of Applicant against goals and performance standards required by City policy and the approved scope of work. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by Applicant within a specified period of time consisting of not less than ten day after being notified in writing by the City of such non-compliance, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Work on the project outlined in Paragraph I.B is anticipated *to commence no later than {Date}, and must be completed by not later than December 31, 2026.* Applicant will communicate with the City's Special Project Manager via a letter at least two weeks prior to the deadline if a contract extension is needed. This letter should include the reasons for the extension, new project completion date, what elements of the project have been completed and what elements of the project still need to be completed. The City reserves the right to deny any such extension request to comply with Grant conditions and state and federal guidelines.

III. BUDGET:

The total project budget is \$**{Total Project Budget}**. The City’s grant contribution to the Total Project Budget is currently **{Amount of Award}**.

The City may require a more detailed budget breakdown than the one contained herein, and Applicant shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City. Any amendments to this budget must be approved in writing by the City and Applicant.

IV. PAYMENT

A. Maximum Amount:

The maximum amount to be paid by the City (for grants) under this agreement shall be the sum of **{Amount of Award}**

B. Process for Payment:

This contract will authorize direct payment by the City for approved scope of work by the Applicant and approved by the Special Projects Manager up to the maximum amount of the grant. Applicant will not be paid for any work performed prior to application review and funding approval by the City. The applicant will provide quarterly updates on progress until the completion of the project. Upon completion of the project, the applicant will submit a letter that the scope of work has been completed and a statement of the results.

V. NOTICES

Communication and details concerning this contract shall be directed to the following contract representatives:

<u>CITY</u>	<u>APPLICANT’S NAME:</u>
<i>Jody Christensen</i>	{Name}
<i>City of McMinnville</i>	{Address}
<i>Special Projects Manager</i>	{Address}
<i>231 NE 5th Street</i>	{Town, State, Zip Code}
<i>McMinnville, OR 97128</i>	
<i>Jody.Christensen@mcminnvilleoregon.gov</i>	{Email}

VI. GENERAL CONDITIONS

A. Contractual Relationship

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing a contractual relationship of any sort between the parties. Applicant shall at all times be responsible its improvements, obligations to contractors and subcontractors, employees, and to comply with all land use requirements.

B. Hold Harmless

Applicant shall hold harmless, defend and indemnify the City from any and all costs, claims, actions, suits, charges and judgments whatsoever that arise out of Applicant's performance or nonperformance of the services or subject matter called for in this Agreement.

C. Insurance & Bonding

Applicant shall carry sufficient insurance coverage until the completion of the project to protect contract assets from loss due to casualty, theft, fraud and/or undue physical damage, and shall provide to City a Certificate of Insurance coverage in force prior to disbursement of grant funds.

D. Grantor Recognition

Applicant shall insure recognition of the role of the City in providing services through this contract. All activities, facilities and items utilized pursuant to this contract shall be prominently labeled as to funding source.

E. Amendments

The City and Applicant may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Applicant from its obligations under this Agreement.

This Agreement shall be subject to all federal, state or local governmental statutes, guidelines, and policies, including amendments made after execution of this Agreement which are binding upon the City. If any change in such code or regulation results in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, the parties shall agree to such modification or the Agreement shall be terminated.

F. Suspension or Termination by City

The City may suspend or terminate the Agreement, in whole or in part, if Applicant materially fails to comply with any term of the Agreement, or with any of the rules, regulations or provisions referred to herein. In addition, the City may declare Applicant ineligible for any further participation in City contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe Applicant is in noncompliance

If this Agreement is terminated, Applicant shall immediately pay back the City the total disbursements received to date under this contract. If not paid within 24 hours of termination, all amounts due shall bear interest at 9% per annum. In any proceeding to recover funds owing under this section, or for any other breach of this agreement by the Applicant, the City of McMinnville shall be entitled to recover from the Applicant its costs and attorney fees incurred.

G. Successors and Assigns

This agreement shall be binding on the parties' successors and assigns.

H. Applicant Termination

Applicant may terminate this Agreement effective upon delivery of written notice to the City under any of the following conditions:

- a. City fails to make payments due under this Agreement, or
- b. City fails to perform the provisions of this Agreement, and within ten (10) days or such longer period as Applicant may authorize, after receipt of written notice from Applicant, fails to correct such failure.

I. Rights After Termination

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

J. No Other Parties

City and Applicant are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.

K. Severability

City and Applicant hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

L. Governing Laws

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 Agreement, 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 Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Yamhill City. 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 above, 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.

M. Counterparts

This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

N. Entire Agreement

This Agreement, Project application and documents provided by Applicant to City prior to the execution of the Agreement, and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. In the event of a conflict, the body of this Agreement and the attached **Exhibit A** will control over **Exhibit B** Project application and documents provided by Applicant to City. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that Part of that or any other provision.

O. Waiver of Certain Damages

Except as provided elsewhere herein, neither party will be liable for incidental, consequential or other direct damages arising out of or related to this Agreement, regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither party will be liable for any damages or any sort arising solely from the termination of this Agreement in accordance with its terms.

P. Limitation on Assignment

Applicant may not assign or transfer its interest in this Agreement without the prior written consent of City and any attempt by Applicant to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. City’s consent to Applicant’s assignment or transfer of its interest in this Agreement will not relieve Applicant of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

Q. Financial Records

Applicant shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Applicant must maintain any other records, whether in paper or other form, pertinent to this Agreement in such a manner as to clearly document Applicant’s performance. All financial records and other records, whether in paper, electronic or other forms, that are pertinent to this Agreement, are collectively referred to as “Records.” Applicant acknowledges and agrees City and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Applicant must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

R. Time of the Essence

Time is of the essence in Applicant’s performance of the Project activities under this Agreement.

S. Required Federal Contract Provisions

All federally or State of Oregon required terms and provision relating to the WORKFORCE RECRUITMENT AND RETENTION GRANT FUNDS

program are hereby incorporated into this Agreement by this reference, are attached hereto as Attachment C to this Agreement and shall govern over any other inconsistent term, condition and provision in the Agreement which are consistent herewith.

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

City _____

APPLICANT

City Manager

{Applicant Name}

Attachment A: Scope of Work.

(Add scope of work from Applicant.)

Applicant Signature

Date

Attachment B: Application on File (includes W-9)

Attachment C: State and Federal rules and regulations

ARPA CONTRACT PROVISIONS

II. Contract Provisions

- For contracts over \$10,000, cities must include a provision that addresses termination for cause and convenience by the local government, including the process for termination and the basis for settlement. The Agreement shall be subject to the following termination provisions which govern over any inconsistent provisions in the Agreement.

Termination

(a) *Termination by the City For Convenience.* The City for its convenience, in its sole and absolute discretion, may terminate this Agreement:

(i) if the Contractor has breached any provision of this Agreement (including without limitation reporting requirements in Schedule A hereto) or has failed to comply with any applicable state or federal law or regulation applicable to any Project and/or any Grant; or

(ii) if any representation or warranty made by the Contractor in any Application, this Agreement, or any certification or other supporting documentation thereunder or hereunder shall prove to have been incorrect in any material respect at the time made.

(b) *Notice of Termination For Cause.* The City shall provide the Contractor with written notice of termination of this Agreement, setting forth the reason(s) for termination. The termination of this Agreement or any one or more Grants shall be effective as of the date such notice of termination is sent by the City.

(c) *Effect of Termination.* Upon termination of this Agreement, the Contractor shall reimburse the City for all non-accrued and unearned costs and disbursements of the Agreement terminated on a schedule to be negotiated in good faith between the City and the Contractor, but in no event more than 60 days from the date of such termination.

The required EEO statement is as follows:

During the performance of this contract, the contractor agrees

as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

1. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in

conspicuous places available to employees and applicants for employment.

5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Cities cannot award a contract to parties listed on the governmentwide exclusions in the System for Award Management (SAM) listed at www.sam.gov.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352: Contractors that apply for a bid or award exceeding \$100,000 must file the required certification that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency. Cities should include the Byrd Anti-Lobbying contract clause is as follows:

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier, up to the recipient.

The language used for the Byrd Anti-Lobbying Certification can be found here.