

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: 12/07/2020**

<b>AGENDA ITEM:</b>	
County – Cities Cares Partnership Inter-local Agreement	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Sandy Langdon, Finance Director	
<b>DEPARTMENT:</b>	
Finance	
<b>ATTACHMENTS:</b>	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b>	

Snohomish County has contacted the City to offer a portion of their CARES Act funding to assist with providing relief to Marysville Businesses. The County allocating \$2.5 million to this program and is available to all cities within Snohomish County. The City’s portion is \$393,753 and possibly more if not all cities participate. Below are the initial requirements of the program. A proposal was submitted to the County on Friday, November 20, 2020.

How: The County and City will into an ILA to facilitate funding of a City’s program. If a city has an existing ILA through the County Department of Emergency Management we will utilize that ILA to distribute funds. If the city does not have an ILA with DEM a new ILA will be created. County Finance staff is currently creating the ILA.

This is reimbursable grant program. City’s will distribute to the successful grantees and then will request reimbursement from the County.

City staff will continue to manage their existing program and will distribute funds to the successful grantees.

Grantees cannot have received previous City CARES Act funds or County CARES Act funds. In addition there can be no doubling up from any other federal source. The county will cross reference the County’s grantee disbursement list to insure that a city’s grantee did not receive County funds.

The County will review each city’s proposed grantee list prior to distribution of funds.

A maximum of \$2.5 million will be divided amongst all eligible city programs. The allocation will be determined by a population basis. We will use OFMs most recent forecast.

**What we need from Cities:**

**All documents pertaining to the existing economic development program including:**

- Existing Grant Application
- FAQ
- Website (We have most of them already)
- Unfunded approved grantee spreadsheet with business ID

- **Example of a successful applicant's application**
- **Decision/Scoring criteria**
- **Proposal for reopening closed grant program that was able to fund every need.**

The deadline for the County to receive the above documentation is 11/20/2020.

The county will make the decision if a program is eligible by 11/25/2020 and will communicate the decision to the City on or before 11/25.

The County will also inform the Cities of the total amount available to each city on or before 11/25/2020.

The County requires that a city's proposed grantee list be delivered to the County by 12/18 for reimbursement to the Cities.

The deadline for disbursement of funds is 12/31/2020, but it is prudent for those funds to be disbursed 2 weeks prior to the end of the year.

**RECOMMENDED ACTION:**

Staff recommends that Council authorize the Mayor or sign and execute the CARES Act Funding Agreement with Snohomish County.

**RECOMMENDED MOTION:**

I move to authorize the Mayor to sign and execute the CARES Act Funding Agreement.

CITY: City of Marysville  
CONTACT PERSON: Sandy Langdon  
ADDRESS: 1049 State Avenue  
Marysville, WA 98270  
FEDERAL TAX ID NUMBER/U.B.I. NUMBER:  
TELEPHONE/EMAIL: 360-363-8017 slangdon@marysvillewa.gov  
COUNTY DEPT: Executive's Office  
DEPT. CONTACT PERSON: Ken Klein  
TELEPHONE/EMAIL: 425-388-3298 Kenneth.Klein@snoco.org  
PROJECT: COVID Preparedness  
AMOUNT: Not to Exceed \$393,753.00  
FUND SOURCE: Essential Govt Services: 130 5740450756  
CONTRACT DURATION: Contract Execution through Dec.30, 2020

### CARES ACT FUNDING AGREEMENT

THIS AGREEMENT (the "Agreement") is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County") and the City of Marysville, a municipal corporation (the "City"). In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Purpose of Agreement; Scope of Services. The purpose of this Agreement is to establish the parameters for providing funding for small businesses on a reimbursable basis through a relief grant program administered by the City of Marysville. The scope of the project is defined in Schedule A attached hereto and by this reference made a part hereof.

The project defined in Schedule A shall be performed in accordance with the requirements of this Agreement and with generally accepted practices prevailing in the western Washington region in the occupation or industry in which the City practices or operates at the time the services are performed. Any materials or equipment used by the City in connection with performing the services shall be of good quality.

The City will prepare and present status reports and other information regarding performance of the Agreement as the County may request.

2. Term of Agreement; Time of Performance. This Agreement shall be effective upon contract execution (the "Effective Date") and shall terminate on December 30, 2020. The project as defined in Schedule A shall be completed no later than December 30, 2020.

3. Compensation.

a. Reimbursement. The County will reimburse the City as set forth in Schedule B, which is attached hereto and by this reference made a part of this Agreement.

b. Overhead and Expenses. No claims for reimbursement of overhead or expenses will be allowed under this Agreement.

c. Invoices. Upon completion of the City's eligible expense for the project, the City shall submit a properly executed invoice to the County indicating the amount of eligible expenses for reimbursement. The invoice shall include an itemization of all reimbursable expenses incurred by the City with reasonable documentation substantiating such expenses, all in accordance with this Section 3 and Schedule A. Subject to Section 7 of this Agreement, the County will pay the invoice within thirty (30) calendar days of receipt.

d. Contract Maximum. Total reimbursable expenses under this Agreement, all fees and expenses included, shall not exceed \$393,753.00 for this Agreement. Schedule C contains additional information on CARES Act Funding requirements and is made a part of this Agreement by this reference.

4. Independent Contractor. The City agrees that City will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. This Agreement neither constitutes nor creates an employer-employee relationship. The parties agree that the City is not entitled to any benefits or rights enjoyed by employees of the County. The City specifically has the right to direct and control City's own activities in providing the agreed services in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance. Nothing in this Agreement shall be construed to render the parties partners or joint venturers.

The City shall furnish, employ and have exclusive control of all persons to be engaged in performing the City's obligations under this Agreement (the "Contractor personnel"), and shall prescribe and control the means and methods of performing such obligations by providing adequate and proper supervision. Such Contractor personnel shall for all purposes be solely the employees or agents of the City and shall not be deemed to be employees or agents of the County for any purposes whatsoever. With respect to Contractor personnel, the City shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, including applicable contributions from Contractor personnel when required by law.

Because it is an independent contractor, the City shall be responsible for all obligations relating to federal income tax, self-employment or FICA taxes and contributions, and all other so-called employer taxes and contributions including, but not limited to, industrial insurance (workers' compensation). The City agrees to indemnify, defend and hold the County harmless from any and all claims, valid or otherwise, made to the County because of these obligations.

The City assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes, fees, licenses, excises or payments required by any city, county,

federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the City and as to all duties, activities and requirements by the City in performance of the work under this Agreement. The City shall assume exclusive liability therefor and shall meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

5. Changes. No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.

6. County Contact Person. The assigned contact person (or project manager) for the County for this Agreement shall be:

Name: Ken Klein  
Title: Executive Director  
Department: Executive's Office  
Telephone: (425) 388-3298  
Email: Kenneth.klein@snoco.org

7. County Review and Approval. When the City has awarded funds pursuant to Schedule A, the City shall verify that the awards conform to the requirements of this Agreement and provide the County the list of awardees per Schedule A. The County shall promptly review whether the list of awardees is acceptable. Reimbursement shall only be made by County for awardees that conform to the requirements of this Agreement.

8. Records and Access; Audit; Ineligible Expenditures. The City shall maintain adequate records to support billings. Said records shall be maintained for a period of seven (7) years after completion of this Agreement by the City. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers and records of the City which are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Subject to Schedules A and C, expenditures under this Agreement, which are determined by audit to be ineligible for reimbursement and for which payment has been made to the City, shall be refunded to the County by the City within ninety (90) days' notice of audit.

9. Insurance Requirements. During the term of this Agreement, the City shall maintain insurance as described below.

a. General. Each insurance policy shall be written on an "occurrence" form.

By requiring the minimum insurance coverage set forth in this Section 9, the County shall not be deemed or construed to have assessed the risks that may be applicable to the City under this Agreement. The City shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

b. No Limitation on Liability. The City's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the City to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

c. Minimum Scope and Limits of Insurance. The City shall maintain coverage at least as broad as, and with limits no less than:

(i) General Liability: \$1,000,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000.00 aggregate limit. CG 00 01 current edition, including Products and Completed Operations;

(ii) Automobile Liability: \$1,000,000.00 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1;

(iii) Workers' Compensation: To meet applicable statutory requirements for workers' compensation coverage of the state or states of residency of the workers providing services under this Agreement;

d. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except workers' compensation and Professional Liability, if applicable, must contain, or must be endorsed to contain, the following provisions:

(i) The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the City in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2026 07/04" or its equivalent is required.

(ii) The City's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the City's liability to the County and shall be the sole responsibility of the City.

(iv) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.

10. Indemnification and Hold Harmless: Except for the sole negligence of the County, the City agrees to protect, defend, and indemnify the County from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the City's activities and/or project associated with this Agreement.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expirations, abandonment or termination of this Agreement.

Nothing contained within the provides shall affect or alter the application of any other provision contained with this Agreement.

11. County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The City shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the City of the City's compliance with the requirements of Chapter 2.460 SCC. If the City is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the City's obligations under other federal, state, or local laws against discrimination.

12. Federal Non-discrimination. Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

13. Employment of County Employees. SCC 2.50.075, "Restrictions on future employment of County employees," imposes certain restrictions on the subsequent employment and compensation of County employees. The City represents and warrants to the County that it does not at the time of execution of this Agreement, and that it shall not during the term of this Agreement, employ a former or current County employee in violation of SCC 2.50.075. For breach or violation of these representations and warranties, the County shall have the right to terminate this Agreement without liability.

14. Compliance with Other Laws. The City shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.

15. Compliance with Grant Terms and Conditions. The City shall comply with any and all conditions, terms and requirements of any federal, state or other grant, if any, that wholly or partially funds the City's work hereunder.

16. Prohibition of Contingency Fee Arrangements. The City warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the City, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the City, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

17. Force Majeure. If either party is unable to perform any of its obligations under this Agreement as a direct result of an unforeseeable event beyond that party's reasonable control, including but not limited to an act of war, act of nature (including but not limited to earthquake and flood), embargo, riot, sabotage, labor shortage or dispute (despite due diligence in obtaining the same), or governmental restriction imposed subsequent to execution of the Agreement (collectively, a "force majeure event"), the time for performance shall be extended by the number of days directly attributable to the force majeure event. Both parties agree to use their best efforts to minimize the effects of such failures or delays.

18. Suspension of Work. The County may, at any time, instruct the City in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work or a notice from the County of breach or termination under Section 19 of this Agreement.

19. Non-Waiver of Breach; Termination.

a. The failure of the County to insist upon strict performance of any of the covenants or agreements contained in this Agreement, or to exercise any option conferred by this Agreement, in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

b. If the City breaches any of its obligations hereunder, and fails to cure the same within five (5) business days of written notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay the City only for the services and corresponding reimbursable expenses, if any, accepted by the County in accordance with Sections 3 and 8 hereof.

c. The County may terminate this Agreement upon five (5) business days' written notice to the City for any reason other than stated in subparagraph b above, in which case





22. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the “Act”). To the extent that public records then in the custody of the City are needed for the County to respond to a request under the Act, as determined by the County, the City agrees to make them promptly available to the County. If the City considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the City shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the City and the County determines that release of the information is required by the Act or otherwise appropriate, the County’s sole obligations shall be to notify the City (a) of the request and (b) of the date that such information will be released to the requester unless the City obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the City fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the City to claim any exemption from disclosure under the Act. The County shall not be liable to the City for releasing records not clearly identified by the City as confidential or proprietary. The County shall not be liable to the City for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

23. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties. The language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings of this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

24. Complete Agreement. This Agreement constitutes the entire understanding of the parties. Any written or verbal agreements that are not set forth herein or incorporated herein by reference are expressly excluded.

25. Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

26. No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the County and the City. This Agreement shall not be deemed to have conferred any rights, express or implied, upon any third parties.

27. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.



## **Schedule A Project**

This project is funded by CARES Act funding and shall comply with the following:

Section 5001 of the CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

City shall:

1. Using previous criteria established by the City for awarding grants to small businesses, review applications for small business grants.
2. Compare applications for small business grants against established criteria for award.
3. Eliminate any applications for small businesses that have previously received money through Snohomish County's R3 Grant program. Eliminate any applications for small businesses for uses not allowed by Section 5001 of the CARES Act.
4. Recommend award for qualifying small businesses by providing a list to the County
5. Ensure that aggregate total grant amounts to qualifying small businesses (Awardees) do not to exceed the Contract Maximum of this Agreement.
6. Distribute funds to County approved Awardees on or before December 18, 2020
7. Provide to the County, no later than December 29, 2020 a detailed spreadsheet of Awardees that have received distributions. City shall ensure that spreadsheet contains for each Awardee: the business name, UBI number, and amount awarded. City shall also provide an invoice for the distributions documented in the spreadsheet.

## **Schedule B**

### **Reimbursable Expenses**

As outlined in Section 3 of this Agreement, City shall submit to the County a properly executed invoice indicating the reimbursable expenses and the amount due from the County. Subject to Section 8 of this Agreement, the County will pay such invoices within thirty (30) calendar days of receipt.

City's reimbursable expenses shall be itemized as described in Schedule A.

The City shall only be reimbursed for funds that are distributed to County-approved Awardees on or before December 18, 2020.

The City shall submit their invoice with the itemized spreadsheet no later than December 29, 2020.

## **SCHEDULE C**

### **CARES ACT SELECT TERMS AND CONDITIONS**

#### **I. TERMS AND CONDITIONS**

This Coronavirus Aid, Relief, and Economic Security (CARES) Act, PL 116-136, Section 5001 Coronavirus Relief Fund is in part or wholly funding this Agreement.

##### **A. Compliance with Specific Laws, Regulations, and Agreements.**

1. City shall comply with the CARES Act, PL 116-136, Section 5001 Coronavirus Relief Fund regarding allowable expenditures.
  - a. The City agrees to undertake the Agreement funded project (“Project”) more fully described in the Statement of Work (hereinafter Schedule A). Agreement funding is to address necessary expenditures due to the public health emergency related to the Coronavirus (COVID-19) pandemic.
  - b. Such expenditures must be incurred during the period of March 1, 2020, through December 30, 2020.
2. City shall comply with the U.S. Department of the Treasury Coronavirus Relief Fund Guidance and Frequently Asked Questions as amended. Additional information is available on the U.S Department of the Treasury website: <https://home.treasury.gov/policy-issues/cares>.

#### **II. FISCAL MANAGEMENT**

The City shall not use funds available under this Agreement to supplant funds otherwise available.

##### **A. Accounting Standards**

The City agrees to comply with OMB Uniform Guidance and 2 CFR part 200.303 regarding internal controls, 2 CFR part 200.330 through 200.333 regarding subrecipient monitoring and management and subpart F regarding audit requirements. City agrees to adhere to the accounting principles and procedures required therein, to

use adequate internal controls, and to maintain necessary source documentation for all costs incurred.

**B. Audit and Recovery**

All disbursements of funds to the City under this Agreement shall be subject to audit and recovery of disallowed costs from the City.

**C. Accounting for Funds**

In order to ensure and to provide documentation that the funds are used only as provided in this Agreement, the City shall account for all funds under this Agreement in a separate account or fund.

**D. Repayment of Funds to County**

The City shall return funds disbursed to it by the County under this Agreement for return by the County to the U.S. Department of the Treasury, upon the occurrence of any of the following events:

1. If overpayments are made; or
2. If an audit of the Project by the U.S. Department of the Treasury or the County determines that the funds have been expended for purposes not permitted by the CARES Act, the U.S. Department of the Treasury, the County, or this Agreement.

In either case, the County shall make a written demand upon the City for repayment, the City shall be obligated to repay to the County the funds demanded within sixty (60) calendar days of the demand. No exercise of the County of the right to demand repayment of funds by the City shall foreclose the County from making an additional demand for repayment if a return of additional funds is required by the U.S. Department of the Treasury; the County's right to demand repayment from the City may be exercised as often as necessary to recoup from the City all funds required to be returned by the County to the U.S. Department of the Treasury.

The City is solely responsible for seeking repayment from any subcontractor in conformance with its debt collection policy.

**E. Cost Principles**

The City shall administer its Project in conformance with OMB Uniform Guidance and 2 CFR part 200.303 regarding internal controls, 2 CFR part 200.330 through 200.333 regarding subrecipient monitoring and management and subpart F regarding audit requirements. These principles shall be applied for all direct costs.

F. Federal and State Prevailing Wage Requirements

Use of federal, state, or local funds to reimburse costs associated with labor performed for any type of maintenance, repair, rehabilitation, construction, etc. may trigger Davis-Bacon and Related Acts (DBRA) wage requirements and/or State Prevailing Wage requirements per RCW Chapter 39.12. Projects that include construction costs will require performance and payment bonds from the prime City.

G. Final Invoice

The City shall submit final invoice for reimbursement or payment under this Agreement no later than January 10, 2021. There are no exceptions.

**III. PROJECT SAFETY**

Recognizing that the body of knowledge regarding COVID-19 is rapidly evolving, the City shall take all reasonable measures, based on the existing state-of-the-art knowledge related to the transmission of COVID-19 as made available by the U.S. Centers for Disease Control and Prevention and the Snohomish Health District, to prevent the spread of COVID-19.

**IV. PERFORMANCE EVALUATION AND MONITORING**

The City agrees to participate with the County in any monitoring (on-site and/or desk) or evaluation of the Project conducted by the County to determine Agreement compliance and to make available all information in its possession relevant to such evaluation.

The County will monitor the performance of the City against the goals and performance standards set forth in this Agreement. Remedies for substandard performance that is not corrected to the County's satisfaction may include Agreement suspension or termination.

**V. TIME OF THE ESSENCE**

Time is of the essence in the performance of each party's obligations under this Agreement. Each party will carry out its obligations under this Agreement diligently and in good faith.