

CARES ACT Mill Creek CARES Small Business Relief Fund

Grant No.: _____ *(City Staff Use Only)*
Federal CFDA number: 21.019

**CITY OF MILL CREEK
MILL CREEK CARES SMALL BUSINESS RELIEF FUND AGREEMENT**

This Mill Creek CARES Small Business Relief Fund Agreement (“Agreement”) is entered into by and between the City of Mill Creek, Washington, a municipal corporation hereinafter referred to as the “City,” and _____, a _____ operating within the City of Mill Creek, hereinafter referred to as the “Grant Recipient.”

WHEREAS, the U.S. Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, which provides funding to assist individuals, businesses, and government with responding to the COVID-19 health crisis;

WHEREAS, the City has received an allocation of CARES Act Funds from the State of Washington under a portion of which the City Council has allocated for the support of small businesses located within Mill Creek;

WHEREAS, the City has established a Mill Creek CARES Small Business Relief Fund to provide funding for certain expenses that are necessary expenditures incurred due to the public health emergency concerning COVID-19 for small businesses that were impacted by the COVID-19 public health emergency and did not receive sufficient relief funding from federal or state programs;

WHEREAS, the Grant Recipient submitted a proposal for grant funding as outlined in Exhibit A and, the City has determined said Grant Recipient and proposal satisfies the eligibility-based criteria for the Mill Creek CARES Small Business Relief Fund;

WHEREAS, the City hereby awards the Grant Recipient a grant based on a prorated amount of available funds and qualified applicants, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intended to be bound hereby, it is mutually agreed as follows:

Section A - Grant Award

1. The total grant awarded to the Grant Recipient is based on a prorated amount of available funds and qualified applicants disbursed in one (1) payment.
2. The Grant Recipient acknowledges that this a one-time award of funding and that the City will provide no additional funding.
3. Grant Recipient shall complete and return a W-9 tax form to the City before

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disbursement of the Grant Award.

Section B - Grant Recipient Responsibilities

1. Grant Recipient shall maintain a current and active Unified Business Identification Number (UBI) for the Grant Term length.
2. Grant Recipients shall be located in Mill Creek (including home-based businesses) with a current and active Unified Business Identification Number (UBI) and City of Mill Creek business license endorsement.
3. Grant Recipient's business or property shall not be subject to any City of Mill Creek code enforcement actions during the Grant Term.
4. Grant Recipient certifies that the Grant Recipient's business is not currently in bankruptcy, does not have unpaid code enforcement judgments, liens, or outstanding penalties, or in violation of any state, federal, or local law.
5. Grant Recipient certifies that it is not suspended, debarred, proposed for debarment, declared ineligible, or otherwise excluded from contracting with the federal government or receiving contracts paid for with federal funds.
6. Grant Recipient shall certify they have not already received federal funds for the same expenses for which the Grant Award will be used.
7. Grant Recipient certifies compliance with the Washington State Health Department directives and guidelines related to reducing the transmission of COVID-19.
8. Grant Recipient certifies that no owner, officer, partner, or principal actor of the business is currently employed by the City of Mill Creek or has an immediate family member who is a current City of Mill Creek employee.
9. Grant Recipient certifies the information provided in its application, and the information provided in all supporting documents and forms is true and accurate in all material respects.
10. Grant Recipient certifies they have read the criteria for funding and the funds' use and will comply with such criteria.
11. A nonprofit organization certifies that they are legally considered a "nonprofit" organization because:
 - a. It is formed under the Washington nonprofit corporation act.
 - b. It qualifies as a nonprofit for federal tax purposes, or
 - c. It is a church, charity, or benevolent organization.
12. Grant Recipient certifies the business loss of revenue reported in its application for Grants is due to negative impacts by the COVID-19 pandemic from April 1 to September 30, 2020. It makes this grant request necessary to support the ongoing operations of the Grant Recipient.
13. Grant Recipient shall only utilize the Grant Award for authorized, eligible business expenses. If the Grant Recipient does not use the Grant Award for such costs, then the Grant Recipient shall be required to reimburse the City for those unauthorized expenditures.
 - a. Eligible expenses are the following:
 - i. Rent, mortgage, or required monthly loan payments;
 - ii. Payroll expenses, which are regular wages, payroll-related taxes; and

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- typical benefits to employees, such as health insurance, paid vacation, or sick leave essential to maintain the Grant Recipient's operations, but only to the extent such payroll expenses have not been reimbursed by any other federal, state, or regional grant or loan programs;
- iii. Typical draw or wages on a regular interval to the Grant Recipient owner provided such draws or wages is consistent with those paid in the previous interval, quarters, or years before March 1, 2020;
 - iv. When necessary for the protection of public health or the health of the Grant Recipient's employees or owners concerning the COVID-19 emergency, Personal Protective Equipment (PPE); sanitizing or disinfecting cleaning products; equipment or physical changes to accommodate social distancing (e.g., plexiglass barriers); and
 - v. Normal operating costs and expenses, including those set forth on the Grant Recipient's income statement as a regular, ongoing cost of operating the business, such as utilities.
- b. Ineligible expenses are the following:
- i. Expenses which are not deductible, or costs not considered ordinary and necessary business expenses, for the entity's federal income tax return, such as items which are personal, lavish, entertainment, or capital in nature;
 - ii. Contributions to a politician, a political party, a political campaign, or a political lobby organization or action committee;
 - iii. Bonuses to owners or employees of the Grant Recipient;
 - iv. Wages to any member of the owner's family, unless that member is an employee of the business;
 - v. Contributions to charities, gifts, or parties;
 - vi. Draw or wages to the Grant Recipient owner that exceeds the amount that they were paid on a weekly or monthly basis for the same period in the prior year;
 - vii. Prepayment of debt by more than the amount required in the underlying debt instrument;
 - viii. Payment of property taxes, business and occupation taxes, use taxes, or any other taxes, except for payroll-related taxes;
 - ix. Payment of license fees;
 - x. Severance pay to employees or owners;
 - xi. Legal settlements;
 - xii. Any expense related to damage that is covered by Grant Recipient's insurance policies;
 - xiii. Any expense that has been or will be reimbursed under any federal program; and
 - xiv. Any expense related to activities prohibited by the U.S. Treasury's COVID- 19 guidelines, federal, state, or local law as described in the Federal Terms and Conditions attached hereto as Exhibit B and

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incorporated herein by this reference.

14. Record Keeping and Reporting

- a. The Grant Recipient shall keep sufficient written expenditure records to demonstrate that the Grant Award was utilized consistent with this Agreement and the CARES Act for eligible expenses incurred from March 1, 2020, to November 30, 2020.
- b. The City reserves the right to request and inspect expenditure documentation related to the Grant Award at any time.

15. Excess Funds or Unauthorized Use of Funds

- a. Suppose the Grant Recipient does not utilize all of the Grant Award by the end of the Grant Term or uses the Grant Award for an unauthorized expense. In that case, the Grant Recipient shall return the excess funds or reimbursement funds to the City no later than October 31, 2020.
- b. Failure to return the excess funds or reimburse the City shall be a basis for suspension of the Grant Recipient's City business license until the funds are returned.
- c. Nothing in this subsection precludes the City from taking all necessary action permitted by law to secure any excess funds or funds used for an unauthorized expense.

16. Grant Recipient certifies that the Grant Funding will not be used to facilitate the production, processing, promotion, distribution, or sale (wholesale or retail) of marijuana and cannabinoid products, concentrates, or extracts.

Section C - Grant Term

- A. Unless terminated as provided in Section E, the Grant Term begins at 12:01 am Pacific Standard Time on the latest undersigned date and ends at 11:59 pm Pacific Standard Time on the 30th day of November 2020. All funds must be expended by the end of the Grant Term or returned to the City, as provided in Subsection B(14).

Section D - Publicity Requirements

- A. The Grant Recipient agrees that the City may photograph, document, or otherwise publicize the Mill Creek CARES Small Business Relief Fund, including the Grant Recipient's participation, in all City publications, including the City's website and social media webpages.
- B. The Grant Recipient may acknowledge the City's provision of the Grant Award in all advertisements and publications, including social media webpage postings, produced by the Grant Recipient. The Grant Recipient may utilize the City's logo for such purposes and may include the following or similar language in those advertisements and publications: [Name of Business] thanks to the City of Mill Creek for providing CARES Act funding to assist in covering expenses due to COVID-19.

Section E - Termination

- A. The Grant Recipient may unilaterally rescind this Agreement at any time before disbursement of the Grant Award. After distribution, this Agreement may only be terminated as provided herein.

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- B. Termination by Grant Recipient. If, after disbursement of the Grant Award, the Grant Recipient elects to no longer participate in the Mill Creek CARES Small Business Relief Fund, the Grant Recipient shall provide written notice to the City along with the reimbursement for any funds remaining or for any funds that may have been expended for an unauthorized expense. According to this subsection, termination shall bar the Grant Recipient from further participation in the Mill Creek CARES Small Business Relief Fund.
- C. Termination for Cause.
 - a. The City shall have the right to terminate this Agreement for the material breach of any term or condition of this Agreement by sending written notice requiring the Grant Recipient to cure the alleged breach within ten (10) calendar days of the written notice. The Grant Recipient is solely responsible for any expenses associated with the cure of its non-compliance or failure to perform. If the Grant Recipient fails to cure the alleged breach within the ten (10) calendar days or to obtain written consent from the City for a reasonable extension of the cure period, the Grant Award shall be revoked, and this Agreement terminated effective at the end of the ten (10) calendar day cure period without additional notice. If Termination for Cause, the Grant Recipient shall reimburse the City for any funds remaining and for any funds that may have been expended for an unauthorized expense. Failure to cure the default shall bar the Grant Recipient from further participation in the Mill Creek CARES Small Business Relief Fund.
 - b. If at any time before or after disbursement of the Grant Award, the City subsequently determines that the grant application contained intentionally misleading or fraudulent information, the City may, at its option, cancel this Agreement immediately, with no opportunity to cure and with no liability for any cost or expense of the Grant Recipient. In such a situation, the Grant Recipient shall reimburse the City in total for the Grant Award and shall be barred, if applicable, from further participation in the Mill Creek CARES Small Business Relief Fund.

Section F - Hold Harmless

- A. The Grant Recipient shall defend, indemnify and hold the City, its elected officials and officers, employees, representatives, agents, and volunteers, harmless from any liabilities, claims, damages, costs, or expenses (including reasonable attorneys' fees) arising from or relating to the work performed under this Agreement to the extent of the Grant Recipient's negligence. Concerning the City, the Grant Recipient waives its immunity under industrial insurance, Title 51 RCW. The parties have mutually negotiated this waiver. This indemnification shall survive the expiration or termination of this Agreement.
- B. The Grant Recipient further acknowledges during the performance of the activities contemplated by the Grant Award, that Grant Recipient, its owners, employees, agents, vendors, and customers may be exposed to or infected by the COVID-19 virus, which could result in quarantine requirements, serious illness, disability, or death. Therefore, the Grant Recipient expressly agrees that any claims, demands, or losses for which it indemnifies, defends, and holds the City harmless shall include those arising, directly or indirectly, from COVID-19.

- C. This section survives the termination or expiration of this Agreement.

Section G - Insurance

- A. The Grant Recipient acknowledges that the Grant Recipient is solely responsible for obtaining and maintaining any insurance customary for its business enterprise. Nothing in this Agreement provides for insurance, of any kind, for the Grant Recipient or Grant Recipient's property, real or personal.

Section H - Public Records Act

- A. The Grant Recipient acknowledges that the City is a public agency subject to Washington's Public Records Act, Chapter 42.56 RCW, and that all records related to this Agreement may be deemed a public record as defined in the Public Records Act, and that if the City receives a public records request unless a statute exempts disclosure, the City must disclose the record to the requestor. The Grant Recipient will timely provide records to the City as necessary to fulfill a public records request or permit the City to inspect the Grant Recipient's records to do the same.

Section I - Force Majeure

- A. Neither Party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time. To the extent, its performance is prevented by reasons of Force Majeure. For this Agreement, Force Majeure means an occurrence beyond the reasonable control of and without fault or negligence of the Party claiming force majeure. The exercise of due diligence of such a Party could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when appropriate governmental officials have declared an emergency; acts of civil or military authority; freight embargoes; epidemics; pandemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice, but no more than two (2) working days after the event, of the impediment and its effect on the ability to perform. Failure to provide such timely notice shall preclude recovery under this provision.

Section J - Successors and Assigns

- A. Neither the City nor the Grant Recipient shall assign, transfer, delegate, or encumber any rights, duties, obligations, or interests that are accruing from this Agreement without the other's written consent.

Section K - Notices

- A. Any notice required under this Agreement will be in writing, addressed to the appropriate Party at the address which appears below (as modified in writing from time to time by such Party), and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

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Grant Administrator

Grant Recipient Name: _____

City of Mill Creek
15728 Main St.
Mill Creek, WA 98012

Address: _____

Email: _____

Phone: _____

Section L - Nondiscrimination

- A. In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, citizen, or immigration status exception is when distinction or differential treatment is authorized by federal or state law, regulation, or government contract, marital status, sexual orientation, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical handicap or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age (except minimum age and retirement provisions), marital status, sexual orientation, honorably discharged veteran or military status, or in the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability.

Section M - General Administration and Management

- A. The City's Grant Administrator assistance is provided through this email address COMCCARESGrant@cityofmillcreek.com.

Section N - Severability

- A. Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken. All remaining provisions shall continue to be valid and binding upon the City and the Grant Recipient, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Section O - Survival

- A. A party's obligation under this Agreement will be continuous and survive expiration or termination of this Agreement as expressly provided in this Agreement or otherwise required by law or intended by their nature.

Section P - Captions

- A. The titles of sections or any other parts of this Agreement are for convenience only and do not define or limit the contents.

Section Q - Governing Law and Venue

- A. This Agreement shall be construed and enforced following the laws of the State of Washington. The venue of any suit between the parties arising out of this Agreement shall be Snohomish County Superior Court. In any judicial proceeding arising out of this Agreement, the non-prevailing Party shall be responsible for all attorneys' fees.

Section R - Entire Agreement

- A. This Agreement contains the entire Agreement between the parties hereto. No other agreements, oral or otherwise, regarding the subject matter shall be deemed to exist or bind any of the parties hereto. Either Party may request changes in the Agreement. Proposed changes that are mutually agreed upon shall be incorporated by written amendment to this Agreement.

Section S - No Third-Party Beneficiary

- A. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

Section T - Waiver

- A. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.

Section U - Attorneys' Fees

- A. In any dispute resolution or judicial action to enforce or determine a party's rights under this Agreement, the prevailing Party (or the substantially prevailing Party, if no one party prevails entirely) shall be entitled to reasonable attorneys' fees, expert witness fees, and costs, including fees and expenses incurred in the appeal of any ruling of a lower court.

Section V - Counterpart Originals

- A. This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement and all of which shall constitute one Agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

Section W - Authority to Execute

- A. Each person executing this Agreement on behalf of a Party represents and warrants that he or she is fully authorized to execute and deliver this Agreement on behalf of the Party for which they are signing. The Parties hereby warrant each other that each has full power and authority to enter into this Agreement and undertake the actions contemplated herein and that this Agreement is enforceable per its terms.

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IN WITNESS WHEREOF, this Agreement is executed by:

CITY OF MILL CREEK

GRANT RECIPIENT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachments:

Exhibit A – Grant Proposal

Exhibit B – Federal Terms and Conditions

Exhibit A – Grant Proposal

Please certify and provide support for the following:

1. Proof Grant Recipient is physically located in Mill Creek.
2. Proof the Grant Recipient has a current and active Unified Business Identification Number (UBI).
3. Proof the Grant Recipient has a valid and current City of Mill Creek business license endorsement.
4. Proof the Grant Recipient employs 50 or fewer full-time equivalent employees as of April 1, 2020.
5. Proof of the Grant Recipient experienced a minimum 25% reduction in gross revenues versus prior year (including a reduction of at least \$10,000) due to negative impacts caused by the COVID-19 pandemic from Apr 1 to Sep 30, 2020. Provide Washington State Department of Revenue filings as supporting documentation.
6. Provide backup demonstrating a minimum of \$10,000 of normal operating costs and expenses by the Grant Recipient from Apr 1 to Sep 30, 2020. (Grants awards will not exceed the documented COVID-19 related loss.)
7. Certify that the Grant Recipient's proposal or expenses submitted do not represent those already covered by another local, State, or Federal Grant application or funding.
8. Certify the Grant Recipient is not involved in the production, processing, promotion, distribution, or sale (wholesale or retail) of marijuana and cannabinoid products, concentrates, or extracts.
9. Certify the Grant Recipient meets all other eligibility requirements specified in the grant agreement and Federal terms and conditions.
10. Please identify the total amount of your Grant reimbursement request for CARES eligible expenses. Please note you may download an Excel worksheet on the City website to assist in the calculation.