

## FERNDALE DOWNTOWN ASSOCIATION CAPACITY ASSISTANCE AGREEMENT

THIS DOWNTOWN CAPACITY ASSISTANCE AGREEMENT (“the Agreement”) is entered into on this (DATE), by and between the Ferndale Downtown Association (the Association) on behalf of the City of Ferndale (“the City”) and the (NAME OF BUSINESS RECIPIENT) (“the Recipient”), recipient of a grant award under the Ferndale Downtown Association Capacity Assistance Program (“the Program”).

The Association has received American Recovery Plan Act (“ARPA”) funding from the City , and is expected to distribute a portion of this funding to new and existing businesses impacted by costs, delays, or expenses directly related to COVID-19 or associated emergency orders , and/or new or existing businesses within the hospitality, service, or tourism sector within the Downtown core, which the City has determined to have been economic sectors disproportionately impacted by COVID-19, and, consistent with guidelines established by the US Treasury Department in 31 CFR Part 35 Coronavirus State and Local Fiscal Recovery Funds as may be amended in the future (the Interim Rule) and an agreement between the City and the Association (the Program Agreement).

These funds (Program Award Funds) shall not require repayment, but shall be used on Eligible Expenses as described by the Interim Rule, the Program Agreement, and this Agreement. It shall be the sole responsibility of the Recipient and their heirs or assigns to monitor, document, and maintain comprehensive records evidencing all of the Recipient’s Program Award Fund expenditures. These records shall be subject at all reasonable times to inspection and review by the Association, acting as an agent of the City, and the Recipient shall be prepared, if necessary and at the request of the Association, the City, or other authorized agencies, to provide documentation to third parties in compliance with the Interim Rule.

Guidance issued by the U.S. Treasury Department in the Interim Rule indicates that funding may be provided for, but is not limited to, the following purposes:

- COVID-19 Mitigation Measures, such as Personal Protective Equipment (PPE), Social Distancing Protocols, and similar measures.
- COVID-19 Recovery for Small or Downtown Businesses, such as business expansion or alteration, structural improvements, staffing costs, etc., when directly associated with COVID-19 impacts
- Downtown Revitalization, such as new or expanded businesses that are expected to have a significant positive impact on established Downtown improvement goals and policies.

The parties herein do mutually agree to the following terms and conditions:

- 1. Award Amount and Eligible Expenses.** The total Program Award Funds to be awarded to Recipient under this Agreement is \$ [REDACTED] Recipient shall use Program Award Funds only for Eligible Expenses incurred during the time period set forth in Section 2 and repayment shall not be required, with the exception of required repayment for

ineligibility under section 4.c. of this Agreement. . A list of Eligible and Ineligible Expenses is included in Exhibit A, a summary of actual expenses is included in Exhibit B.

2. **Time Period.** All Eligible Expenses must be incurred by the Recipient between March 3, 2021 and December 31, 2024. Any expenses incurred before or after this period are not Eligible Expenses for disbursement as Program Award Funds. The Recipient understands that any expenses incurred (even if eligible) in excess of Program Award Funds are the Recipient's sole responsibility and will not be paid by the Association.
3. **Subcontracts, Subgrants, and Subawards by Recipient Prohibited.** The Recipient shall not (i) make any subgrants or subawards from the Program Award Funds provided under the Program or (ii) enter into any subcontracts relating to any Program Award Funds provided under the Program.
4. **Compliance with Federal, State and Local Laws/Program Award Funds Subject to Recoupment for Ineligible Expenses.** The Recipient shall comply with and obey all applicable federal, state, and local laws, regulations, and ordinances.
  - a. **Requirement to Provide Accurate Information.** The Recipient understands and acknowledges that providing false information on any documents submitted to the Association, the City, or its designees as part of the Recipient's participation in the Program may constitute fraud, and may be subject to civil and/or criminal penalties and/or sanctions.
  - b. **No Use of Program Award Funds for Expenses Covered by Other Programs.** The Recipient shall not use Program award funds to cover payroll or other employee-related or business-associated costs for which the Recipient has received other federal, state or regional funds, including without limitation funds made available under the Payroll Protection Program ("PPP") or unemployment insurance compensation.
  - c. **If Program Award Funds associated with this Agreement are disbursed in a manner determined by the Association, the City, or other authorized agency, to be inconsistent with applicable laws, provisions of this Agreement, or otherwise ineligible under the Interim Rule, the City shall seek reimbursement for the Program Award Funds disbursed in violation of the Interim Rule, and the Recipient shall be obligated to repay those Program Award Funds in full. The City shall not exercise this right until it has given written notice to the Recipient of noncompliance and /or ineligibility and allowed Recipient a period of ten (10) days from the date of said notice for Recipient to cure the noncompliance and/or ineligibility. If the noncompliance/ineligibility is not cured within ten (10) days of the City's notice, Recipient shall repay the City the full amount of the disbursed Ineligible Funds within thirty (30) days of the original notice or such other time period specified by the City in writing. The Recipient also agrees to repay to the City any Program Award Funds that are not used. The right of**

recapture provided in this section is in addition to and not in lieu of any right which Washington law provides for breach of contract.

- d. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction. Recipient certifies, by signing this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.
- 5. Maintenance of Records.** The Recipient shall maintain accurate written records, including accounting records such as invoices, sales receipts, and proof of payment, books, documents, data and other evidence documenting all of Recipient's direct and indirect expenditures of Program Award Funds. These records must be sufficient to demonstrate that the funds have been used in accordance with Section 601(d) of the Social Security Act. The Association and/or the City may at any time request to review the documentation to determine the Recipient's conformance with the requirements of the Program, and the Recipient shall make available to the Association and/or the City, upon request, all of the Recipient's records and documentation with respect to all disbursements covered by this Agreement. The Recipient shall be given \_\_\_ business days to produce the requested documentation.
- a. The Association and/or the City may require the Recipient to provide additional documentation if the existing documentation is deemed incomplete.
  - b. The Recipient shall retain all records related to this Agreement for a period of at least six (6) years following the receipt of Program Award Funds. These records, including materials generated under this Agreement, shall be subject at all reasonable times to inspection and review by the City, and to an audit by the Washington State Department of Commerce or personnel duly authorized by Commerce, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.
  - c. If any litigation, claim or audit is started before the expiration of the six (6) year period provided in Section 4(b) above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- 6. No Employee Relationship.** The Recipient understands and acknowledges that neither the Recipient nor any officer, employee or agent of the Recipient shall be considered an employee of the Association or the City, nor entitled to any benefits accorded Association or City employees, by virtue of the services provided under this Agreement. Neither the City nor the Association shall be responsible for assuming the duties of an employer with respect to the Recipient or any employee of the Recipient.
- 7. Indemnification.** The Recipient shall defend the Association and the City and indemnify and hold the Association and the City harmless against any claim or liability of any nature in connection with or arising in any manner out of this Agreement including,

without limitation, any breach of covenants, representations, certifications, and warranties made by Recipient in connection with the provisions of Program Award Funds under the Program, and any determination by the Association, the City, the United States Treasury, the State of Washington, or any other authorized agency or as otherwise determined by a court of law, that the Recipient's administration or expenditure of Program Award Funds awarded under the Program was inconsistent with, or in violation of, any applicable law, including the Interim Rule, and any applicable regulations and guidance issued in connection therewith, or any use of the Program Award Funds provided under the Program to the Recipient, or the performance of the services or activities relating thereto, or any other activities of the Recipient, its subcontractors, agents, independent contractors, or employees. In the event of any dispute between the Recipient and its employees, subcontractors or anyone with a claim to some or all of the Recipient's Program Award Funds, the Recipient shall be responsible for resolution of any such claim and neither the Association or the City shall have any responsibility or obligation in the resolution process or outcome.

- 8. Non-discrimination.** The Recipient shall conduct its business and use Program Award Funds in a manner which assures fair, equal and non-discriminatory treatment of all persons, including maintaining open hiring and employment practices, and compliance with all requirements of applicable federal, state or local laws or regulations related to hiring and employment practices and providing services to all persons, without discrimination as to any person's race, color, religion, sex, sexual orientation, disabled veteran condition, physical or mental handicap or national origin.
- 9. Complete Agreement.** This Agreement sets forth the complete expression of the agreement between the Parties, and any oral representations or understandings not incorporated herein are excluded.
- 10. Waiver.** Any waiver by the Recipient or the Association of the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.
- 11. Modification.** This Agreement may only be amended by written agreement signed by both Parties.
- 12. Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.
- 13. Notices.**

A. Notices to the Association be sent to the following address:

B. Notices to the Recipient shall be sent to the following address:

**14. Assignment of Contract.** The Recipient shall not assign this Agreement without the prior written consent of the Association.

**15. Venue.** This Agreement shall be governed by the law of the State of Washington and venue for any lawsuit arising out of this Agreement shall be in Whatcom County.

**16. Disclaimer of Liability.** Washington State Department of Commerce and the State of Washington are not liable for claims or damages arising from the Recipient's performance of this Agreement.

**17. City Retains Final Authority.** The City of Ferndale retains the final authority to take any legal actions necessary to prevent and/or invalidate subrecipient agreements or expenditures that it determines are ineligible for ARPA expenditure. The City Administrator, acting on the recommendation of the City Finance Director and/or City Attorney, shall make such a determination and take whatever action is necessary to invalidate subrecipient agreements and/or to recover funds under applicable laws.

IN WITNESS WHEREOF, the Association and Recipient have executed this Agreement as of the date first above written.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, **2022**, for the **RECIPIENT**.

\_\_\_\_\_  
, *RECIPIENT*

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, **2022**, for **FERNDALE DOWNTOWN ASSOCIATION**.

\_\_\_\_\_  
**Bertella Hansen**, *PRESIDENT*

