

**“WHATCOM CARING”
COVID-19 CHILDCARE BUSINESS ASSISTANCE PROGRAM AGREEMENT**

THIS AGREEMENT is entered into on this 10th day of November 2020, by and between the Whatcom County, (the “County”) and The Seedlings Early Learning Center, Inc, recipient of a grant award under the “Whatcom Caring” Childcare Business Assistance Program, (the “Recipient”).

RECITALS

WHEREAS, on February 29, 2020, the Governor of the State of Washington proclaimed that a State of Emergency exists in all counties in the State of Washington due to the outbreak of novel coronavirus (COVID-19); and

WHEREAS, on March 16, 2020, the Governor issued an emergency proclamation aimed at limiting the spread of the disease by prohibiting: (1) the onsite consumption of food and/or beverages in public venues; (2) the operation of public venues in which people congregate for entertainment, social or recreational purposes; and (3) the operation of all retail stores, except pharmacies and grocery stores, unless the stores establish and implement appropriate social distancing and sanitation measures; and

WHEREAS, the restrictions included in the Governor’s March 16, 2020 proclamation are appropriate for public health reasons, they have a significant adverse financial impact on businesses; and

WHEREAS, on March 10, 2020, the Whatcom County Executive issued a Proclamation of Emergency in response to the county-wide COVID-19 outbreak and did authorize the exercise those emergency powers contained therein and consistent with the Whatcom County Code and Whatcom County Charter;

WHEREAS, on March 23, 2020, the Governor issued an emergency “Stay Home – Stay Healthy” proclamation prohibiting all people in the State of Washington from leaving their homes and all non-essential businesses in Washington State from conducting business through April 6, 2020 and subsequently extended the proclamation through May 31, 2020; and

WHEREAS, Governor Inslee’s “Stay Home – Stay Healthy” order is appropriate for public health reasons, it will extend and deepen the adverse financial impact already being felt by businesses in the Whatcom County; and

WHEREAS, on March 27, 2020, the United States Congress adopted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) which, among other things, amended Section 601(a) of the Social Security Act and established the Coronavirus Relief Fund (“CRF”) into which

Congress appropriated \$150,000,000,000 to make payments for specified uses to states and certain local governments; and

WHEREAS, the CRF is available to reimburse government recipients for necessary expenditures incurred due to the COVID-19 public health emergency that were not accounted for in the government recipient’s most-recently appropriated budget and that were incurred during the period between March 1, 2020 and December 30, 2020; and

WHEREAS, guidance issued by the U.S. Treasury Department indicates that necessary expenditures incurred due to the COVID-19 public health emergency include costs incurred to support local businesses that suffered losses due to COVID-19 business interruptions and related closures, or incurred costs for personal protective equipment or other materials, supplies and equipment needed to safely operate following a COVID-19-related closure; and

WHEREAS, the State of Washington has decided to distribute a certain portion of its share of the CARES Act funds to Washington counties, including Whatcom County, with such funds being administered through the Washington State Department of Commerce (“Commerce”); and

WHEREAS, pursuant to the Washington State Department of Commerce Interagency Agreement with Whatcom County through the CRF for Local Government (Whatcom County contract number 202006003) executed by the County on June 3, 2020, reimbursable expenditures must be incurred during the period between March 1, 2020 and October 31, 2020 in order for the State of Washington to close out its contracts in time to meet the United States Treasury’s December 30, 2020 end date; and

WHEREAS, the County adopted Supplemental Budget Ordinance Number 13 (Ordinance 2020-035) amending the 2019-2020 Biennial Budget Increasing Appropriations and Estimated Revenues in the COVID-19 Emergency Response Fund for COVID-19 response programs from the CARES Act grant, including funds for the Program; and

WHEREAS, Whatcom County has determined that effective economic recovery from COVID-19 and its effects requires ready access to reliable, safe, and stable child care resources throughout the community; and

WHEREAS, child care businesses throughout Whatcom County are in need of financial support to help with certain costs of business interruption caused by COVID-19 and its secondary effects and to also facilitate compliance with applicable health and safety measures related to COVID-19; and

WHEREAS, the County in collaboration with the City of Bellingham established “Whatcom Caring” Childcare Business Assistance Program (the “Program”), the focus of which is providing monetary grants to financially assist community-based childcare providers who have experienced business interruptions and increased expenses as a result of COVID-19 and as is consistent with the CARES Act and CRF requirements; and

WHEREAS, the County has determined the Recipient eligible for assistance under this Program and the Recipient has been selected as an awardee pursuant to the joint City-County application and selection process.

NOW, THEREFORE, the parties herein do mutually agree as follows:

- 1. Award Amount and Eligible Expenses.** The total amount to be awarded to Recipient under the Program is **\$50,000** (“Program Award Funds”). Recipient shall use Program Award Funds only to pay or reimburse Recipient for Eligible Expenses incurred during the time period set forth in Section 2. A list of Eligible and Ineligible Expenses is included in Exhibit C. A list of Eligible Expenses awarded to Recipient is attached as Exhibit B. Expenditure of Program Award Funds on Ineligible Expenses shall be subject to recapture at the discretion of the County. The Recipient agrees to repay to the County, within thirty (30) days or such other the time period specified by the County in writing, all Program Award Funds determined by the County to have been spent on an Ineligible Expense. In the alternative, the County may recapture such funds from payments due under this Agreement.
- 2. Time Period.** All Eligible Expenses must be incurred by the Recipient between March 1, 2020 and October 31, 2020. Any expenses incurred before or after this period are not Eligible Expenses for Program Award Funds. The Recipient understands that any expenses incurred in excess of Program Award Funds are the Recipient’s sole responsibility and will not be paid by the County.
- 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.** The Recipient shall comply with and obey all applicable federal, state and local laws, regulations, and ordinances. Should the Recipient’s spending of the Program Award Funds be inconsistent with applicable laws, provisions of this Agreement, or otherwise inappropriate, the County shall have the right to the return of any portion of the Program Award Funds that are later determined to have been spent in violation of applicable laws. In the alternative, the County may recapture such funds from payments due under this Agreement. The County shall not exercise this right until it has given written notice of noncompliance with applicable laws or this Agreement to Recipient, and allowed Recipient a period of ten (10) days from the date of notice for Recipient to cure the noncompliance. 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.

- a. Requirement to Provide Accurate Information. The Recipient understands and acknowledges that providing false information on any documents submitted to the County 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. 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 that reflects 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 County may at any time review the documentation to determine the Recipient's conformance with the requirements of the Program, and the Recipient shall make available to the County, upon request, all of the Recipient's records and documents with respect to all matters covered by this Agreement.
- a. The County 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 six (6) years following the receipt of Program Award Funds. These records, including materials generated under the contract, shall be subject at all reasonable times to inspection and review by the County, and to an audit by the Washington State Department of Commerce, 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 to be an employee of the County, nor entitled to any benefits accorded County employees, by virtue of the services provided under this Agreement. The County shall not 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 County and indemnify and hold the County 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 application or the provisions of Program Award Funds under the Program, and any determination by the County, the United States Treasury, the State of Washington, or any other governmental authority 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 CARES Act, 42 U.S.C. § 801, 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 the County shall have no responsibility or obligation in the resolution process or outcome.
- 8. Non-discrimination.** The Recipient shall conduct its business and use 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 County 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 Whatcom County shall be sent to the following address:

Whatcom County Executive's Office
Attn: Tawni Helms
Whatcom County Courthouse
311 Grand Avenue
Bellingham, WA 98225

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

The Seedlings Early Learning Center, Inc.
Attn: Kimberly Walbeck
3140 Bennett Drive
Bellingham, WA 98225

14. Assignment of Contract. The Recipient shall not assign this contract without the prior written consent of the County.

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.

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

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and bind the party thereto.

DATED _____, for the **RECIPIENT**.

Kimberly K. Walbeck, Owner

DATED _____, for **WHATCOM COUNTY**.

Satpal Singh Sidhu, Whatcom County Executive

Approved as to Form:

C. Quinn per email 10/30/2020

*Christopher Quinn,
Whatcom County Senior Deputy Prosecuting Attorney*

Exhibit A

(SCOPE OF WORK)

I. Background

Seedlings Early Learning Center provides early learning childcare for 77 children ages 1 month to 7 years old. Approximately half of those spaces are filled by children eligible for USDA Food Assistance. Funding recipient has had considerable economic injury due to reduced capacity and closures due to COVID-19.

II. Statement of Work

The Contractor will be reimbursed for operational losses incurred at their childcare facilities as a result of COVID-19 and for measures taken to decrease the transmission of COVID-19 among clients and staff.

III. Reporting Requirements

Contractor will complete a Financial Position Worksheet (template to be provided by the County) to document financial impact of COVID-19.

Exhibit B (COMPENSATION)

I. Budget and Source of Funding: Funding for this contract may not exceed **\$50,000**. Funds under Contract are made available and are subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief and Economic Security Act (CARES Act), and Title V and VI of the CARES Act. This project was supported by a grant awarded by the US Department of the Treasury. Grant funds are administered by the Local Government Coronavirus Relief Fund thru the Washington State Department of Commerce CARES (CFDA 21.016). COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract. The budget for this contract is as follows:

Cost Description	Documents Required w/Invoice	Budget
Operational losses directly related to COVID-19	Financial Position Worksheet indicating pre-COVID and post-COVID monthly revenue and expenses	\$50,000
TOTAL		\$50,000

III. Invoicing

1. The Contractor shall submit itemized invoices not more than monthly in a format approved by the County. Monthly invoices must be submitted by the 15th of the month following the month of service except final invoices which must be received by November 4, 2020. Invoices submitted for payment must include the items identified in the table above.
The Contractor shall submit invoices (*include contract#*) to:
Whatcom County Executive Office
Attn: Tawni Helms
311 Grand Avenue, Suite 108
Bellingham, WA 98225
2. Invoices must include the following statement, with an authorized signature and date:
I certify that the materials have been furnished, the services rendered, of the labor performed as described on this invoice.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Duplication of billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

Exhibit C

ELIGIBLE AND INELIGIBLE USES OF WHATCOM CARES GRANT FUNDS

An eligible use of grant funds means a cost incurred due to COVID-related public health measures or business interruption.

A. Eligible Uses of Program Grant Funds:

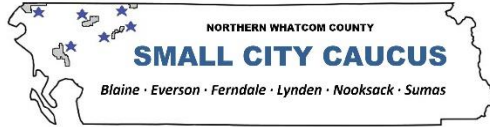
- I Not to exceed operational loss:
 - a. Payment of rent or required monthly loan payments.
 - b. Payments of regular wages, employee benefits and taxes; provided such expenses have not been and, to the best knowledge of the Recipient, will not be reimbursed under any federal, state or regional program, including any grant or loan programs.
 - c. Expenditures involved in typical operating costs, including those set forth on an income statement as a regular, ongoing cost of operating the business.
 - d. Typical draws or wages paid on a regular interval to the owner; provided such draws or wages are consistent with those paid to the owner in previous corresponding quarters, years or other appropriate time intervals.
- II Expenses for compliance with compliance with COVID-19-related public health measures:
 - a. including personal protective equipment and supplies, plexiglass barriers or other similar equipment and expenses reasonably necessary for the protection of public health and the health of Recipient owners and employees.

B. Ineligible Uses of Program Grant Funds:

- a. Political campaign contributions or donations.
- b. Charitable contributions or gifts.
- c. Bonus payments to Recipient owners, officers or employees.
- d. Payment of wages to any member of the Recipient owner's family who is not a bona fide employee.
- e. Draws or salary to Recipient owner that exceeds the amount paid over a corresponding interval, quarter, or year in 2019.
- f. Paydown or payoff of debt by more than the monthly amount required by the underlying debt instrument.
- g. Payroll and other employee- or business-associated costs for which the Recipient has received or expects to receive reimbursement from other federal, state or regional funds (*e.g.* Payroll Protection Program or unemployment insurance).
- h. Damages covered by insurance.
- i. Reimbursement to donors for donated items or services.
- j. Severance pay.
- k. Legal settlements.
- l. Lost profits.
- m. Any expenses not considered an eligible business expenses by the Department of the Treasury Internal Revenue Service.

Exhibit D

Childcare Assistance Application Round 2



If you have questions about this application, are a closed operator, or require additional support to complete it, please contact:

Opportunity Council's Child Care Aware of NW Washington
8:00 am – 5:00 pm, Monday – Friday
Phone: (360) 734-8396 x227
Toll free: (888) 444-1862 x227
Email: childcare@oppc.org

This application must be received no later than October 25, 2020 at 11:59pm. Late applications will not be accepted.

Provider Information

Childcare Business Name

The Seedlings Early Learning Center Inc.

Unified Business Identifier (UBI) Number

The Seedlings Early Learning Center Inc.

604287614

If you do not have a UBI number, please use your Social Security Number.

Contact Name

The Seedlings Early Learning Center Inc.

604287614

Kimberly Walbeck

Phone

The Seedlings Early Learning Center Inc.

604287614

Kimberly Walbeck

(360) 676-4015

Alternate Phone

The Seedlings Early Learning Center Inc.

604287614

Kimberly Walbeck

(360) 676-4015

(360) 303-8338

Email

The Seedlings Early Learning Center Inc.

604287614

Kimberly Walbeck

(360) 676-4015

(360) 303-8338

theseedlingselc@gmail.com

Business Profile

Woman Owned

Minority Owned

HUD Section 3

Registered non-profit in WA State or Federal government 501(c)(3)

The Seedlings Early Learning Center Inc.

604287614

Kimberly Walbeck

(360) 676-4015

(360) 303-8338

theseedlingselc@gmail.com

Please indicate if your business is designated as any of these (select all that apply).
[Office of Minority & Women's Business Enterprises](#)
[HUD Section 3](#)

Child Care Service

Business Location

3140 Bennett Dr

Address Line 1

Address Line 2

Bellingham

98225

City

Zip Code

If there are multiple locations where the business provides child care services, provide the address where you intend to use the largest portion of any grant funds provided.

School District

3140 Bennett Dr

Bellingham

98225

Bellingham School District #501

Which school district does the business service location provided above reside in? [Whatcom County School Districts Map \(PDF\)](#)

Active License

Yes No

Do you have an active license through 2020?

Age Range

3140 Bennett Dr

Bellingham

98225

Bellingham School District #501

1 month-7 years

Age of children served at all licensed locations combined.

Infant Spaces

3140 Bennett Dr

Bellingham

98225

<i>Bellingham School District #501</i>
<i>1 month-7 years</i>
<i>6</i>

The number of licensed infant spaces at all locations combined.

Toddler Spaces

<i>3140 Bennett Dr</i>	
<i>Bellingham</i>	<i>98225</i>
<i>Bellingham School District #501</i>	
<i>1 month-7 years</i>	
<i>6</i>	
<i>21</i>	

The number of licensed toddler spaces at all locations combined.

Total Number of Spaces

<i>3140 Bennett Dr</i>	
<i>Bellingham</i>	<i>98225</i>
<i>Bellingham School District #501</i>	
<i>1 month-7 years</i>	
<i>6</i>	
<i>21</i>	
<i>77</i>	

The number of all licensed spaces at all locations combined for all ages.

Percent USDA Food Assistance

0 - 20%

<i>3140 Bennett Dr</i>	
<i>Bellingham</i>	<i>98225</i>
<i>Bellingham School District #501</i>	
<i>1 month-7 years</i>	
<i>6</i>	
<i>21</i>	

77

Page 2 of 4

21 - 40%

41 - 60%

more than 60%

Percentage of spaces typically (pre-COVID) filled by children eligible for USDA food assistance.

Working Connections Child Care Program

Yes No

Does your licensed child care service participate in the Working Connections Childcare Program?

Working Connections Enrollment

29

How many Working Connection Child Care spaces are currently enrolled?

COVID-19 Impacts

The business must have experienced two out of the following three impacts to qualify for this grant.

Closures

Yes No

Did your child care center close due to COVID-19?

Change in Customer Demand or Operational Capacity

Yes No

Did your child care center experience a change in customer demand or operational capacity due to COVID-19?

Increase in Operations Costs

Yes No

Did your child care center experience an increase in operational costs due to COVID-19?

Business Financials

Complete the following for your business as a whole. Customer fees for Q3 2019 and 2020 are not required, but are encouraged.

If you have already applied for the Whatcom ReStart CARES dollars in Round 1

You are welcome to apply again, but must focus on eligible expenses above and beyond what your grant commitment is covering (as well as any other COVID-specific grant funding).

29

Customer Fees Q2 2019

29

Customer Fees Q3 2019

29

\$200,033.68

\$197,638.76

Customer fees collected from April 1 - June 30, 2019.

Customer Fees Q2 2020

29

\$200,033.68

\$197,638.76

Customer fees collected from July 1 - September 30, 2019.

Customer Fees Q3 2020

29

\$200,033.68

\$197,638.76

\$154,516.09

\$199,808.13

Customer fees collected from April

29

\$200,033.68

\$197,638.76

\$154,516.09

\$199,808.13

Customer fees collected from July

29

\$200,033.68

\$197,638.76

\$154,516.09

\$199,808.13

1 - June 30, 2020.

1 - September 30, 2020.

Financial Aid

Awards will be issued to successful applicants to reimburse expenses incurred or outstanding from March 1, 2020 through October 31, 2020. Expenses already reimbursed by other funding sources, such as Paycheck Protection Program (PPP) or Economic Injury Disaster Loan (EIDL), or other WhatcomRestart grants may not be duplicated.

[Eligible Expenses \(PDF\)](#)

Expenses already reimbursed by or committed from other COVID-specific grants such as the initial Whatcom ReStart grant may not be duplicated.

Amount Being Requested

\$50,000.00

Grant amount requested, based on eligible receipts.

Signature and Acknowledgment

I declare under penalty of perjury that:

- the information contained in his application is true and complete and that it is my responsibility to notify the City if any of that information changes prior the execution of the a grant contract.
- the funds requested (\$50,000.00) are necessary to remain operational, not duplicative of any other funding received, and without this financial support this childcare operation is at risk of closing.
- the funds will only be used to pay or reimburse for eligible expenses incurred between March 1, 2020 and October 31, 2020, provided those expenses have not already been covered by Whatcom ReStart (CARES) or other COVID- specific funding.
- if awarded a grant, I agree to provide additional information as may be reasonably requested, and to complete a close-out interview with the Opportunity Council no later than December 31, 2020. This interview may include the collection of your financial data.

Signature

\$50,000.00

Kimberly K Walbeck

Type your name to serve as your signature.

Date Signed

\$50,000.00

Kimberly K Walbeck

10/23/2020