

**SUBRECIPIENT AGREEMENT BETWEEN WHATCOM COUNTY AND
THE LYNDEN SCHOOL DISTRICT #504fw FOR DISTANCE LEARNING
FINANCIAL ASSISTANCE THROUGH THE CARES ACT**

THIS AGREEMENT is entered into this 17th day of September, 2020, by and between the County of Whatcom, Washington, (herein called the “County” or “Whatcom County”), and the Lynden School District herein called “Subrecipient”). The County and Subrecipient shall sometimes be referred to herein individually as the “Party” and collectively as the “Parties.”

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 October 31, 2020; and

WHEREAS, the COVID-19 emergency requires Whatcom County school districts to engage in virtual educational instruction beginning in September 2020 and continuing into the foreseeable future to ensure the safety and welfare of students, teachers, administrators, and the public-at-large;

WHEREAS, distance learning and instruction requires all Whatcom County students have access to reliable internet connectivity, computers, and other information technology equipment and services;

WHEREAS, Whatcom County’s school districts are working with internet service providers and computer hardware retailers to ensure all its students are properly equipped to receive and participate in online instruction during the school year;

WHEREAS, the costs associated with distance instruction and learning resulting from the COVID-19 emergency were neither anticipated nor budgeted for by Whatcom County’s school districts;

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 to assist County School Districts; and

WHEREAS, Whatcom County has allotted \$900,000.00 of its CRF funds to assist County school districts with costs and expenses incurred in response to the COVID-19 emergency;

WHEREAS, Whatcom County recognizes the critical need for internet connectivity and computer equipment assistance necessary for virtual learning as a result of the COVID-19 emergency;

NOW, THEREFORE, in consideration of the premises and promises, terms and conditions set forth below, it is agreed as follows:

I. AGREEMENT TERM

A. This Agreement shall become effective on the date of execution, and end on October 31, 2020 (the “Initial Term”).

B. This Agreement may be extended beyond the Initial Term only upon the written approval of both Parties; provided, however, that all terms and conditions of this Agreement shall remain in full force and effect unless this Agreement is specifically amended.

C. The County, in its sole and absolute discretion, may terminate this Agreement at any time.

II. ACTIVITIES & ELIGIBLE EXPENSES

A. Activities

Subrecipient shall be responsible for administering all COVID-19 response activities in a manner satisfactory to the County and consistent with any standards required as a condition of providing these funds. Allowable activities of Subrecipient must be directly tied to response and recovery efforts related to COVID-19 and must be allowable pursuant to the CRF requirements.

B. Eligible Expenses

Whatcom County, in its sole and absolute discretion, may reimburse and/or provide funding to Subrecipient for “Eligible Expenses” incurred by Subrecipient as described on Attachment A of this Agreement. Notwithstanding anything herein to the contrary, “Eligible Expenses” shall not include lost revenue. Failure of Subrecipient to comply with the provisions of this Agreement, including non-compliance with 2 C.F.R. 200, may result in expenses being disallowed, withholding of federal funds, and/or termination of this Agreement.

III. SOURCES OF FUNDING

Funding for this Agreement may not exceed \$130,000. Funds under the 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 federal assistance awarded by the US Department of the Treasury. Federal assistance funds are administered by the Local Government Coronavirus Relief Fund thru the Washington State Department of Commerce (CFDA 21.016). COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract.

IV. NOTICES

Notices to the County as required by this Agreement shall be delivered in writing and addressed to Whatcom County as set forth below. Notices to Subrecipient as required by this Agreement shall be in writing, via email and addressed to Subrecipient as set forth below. All such notices shall also be deemed duly given if personally delivered, or if deposited in the United States mail, registered or certified return receipt requested.

A. Notices to Whatcom County shall be sent to the following address:

Whatcom County Executive's Office
Attn: Tawni Helms
Whatcom County Courthouse, Suite 108,311 Grand Avenue
Bellingham, WA 98225

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

Lynden School District
Attention Christine Blake
516 Main Street
Lynden, WA 98264

V. TERMS & CONDITIONS

The following requirements are applicable to all activities undertaken with CRF funds.

A. Compliance with State and Local Requirements. Subrecipient acknowledges that this Agreement requires compliance with the regulations of the State of Washington and with all applicable state and local orders, laws, regulations, rules, policies, and certifications governing any activities undertaken during the performance of this Agreement.

B. Compliance with Federal Requirements

Subrecipient acknowledges that Eligible Expenses funded or reimbursed by Whatcom County to Subrecipient are not considered to be grants but are “other financial assistance” under 2 C.F.R. 200.40. This Agreement requires compliance with certain provisions of Title 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Subrecipient agrees to comply with all applicable federal laws, regulations, and policies governing the funds provided under this Agreement. Subrecipient further agrees to utilize available funds under this Agreement to supplement rather than supplant funds otherwise available.

During the performance of this Agreement, the Subrecipient shall comply with all applicable federal laws and regulations, including, including, but not limited to, the following:

- Fund payments are subject to 2 C.F.R. 200.303 regarding internal controls.
- Fund payments are subject to 2 C.F.R. 200.330 through 200.332 regarding subrecipient monitoring and management.
- Fund payments are subject to 2 CFR 200, Subpart F regarding audit requirements.

Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in this Agreement, including but not limited to 2 C.F.R. 200.303, 2 C.F.R. 200.330-332, 2 C.F.R. 200.501(a), and 2 C.F.R. Part 200 Subpart F.

With respect to any conflict between such federal requirements and the terms of this Agreement and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

C. Hold Harmless

Subrecipient shall hold harmless, release, and defend Whatcom County from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient’s performance or nonperformance of the services or subject matter called for in this Agreement.

D. Indemnification

The Subrecipient 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 Subrecipient 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.

Further, to the fullest extent permitted by law, Subrecipient shall also indemnify, defend, and hold harmless the state of Washington, the Department of Commerce, agencies of the state and all officials, agents, and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the Agreement.

"Claim" as used in this Agreement, means any financial loss, claim, suit, action, damage, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

Subrecipient's obligation to indemnify, defend, and hold harmless the State includes any claim by Recipient's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Subrecipient expressly agrees to indemnify, defend, and hold harmless the County and the State from any claim arising out of or incident to Subrecipient's or subgrantee's/subcontractor's performance or failure to perform the Grant. Subrecipient's obligations to indemnify, defend and hold harmless the County and the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of the County or the State or their agents, agencies, employees and officials.

Subrecipient waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the County and the State and their agencies, officers, agents or employees.

E. Misrepresentations & Noncompliance

Subrecipient hereby asserts, certifies and reaffirms that all representations and other information contained in Subrecipient's application, request for funding, or request for reimbursement are true, correct and complete, to the best of Subrecipient's knowledge, as of the date of this Agreement. Subrecipient acknowledges that all such representations and information have been relied on by the County to provide the funding under this Agreement.

Subrecipient shall promptly notify the County, in writing, of the occurrence of any event or any material change in circumstances which would make any Subrecipient representation or

information untrue or incorrect or otherwise impair Subrecipient's ability to fulfill Subrecipient's obligations under this Agreement.

F. Workers' Compensation

Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

G. Insurance

Subrecipient shall carry sufficient insurance coverage to protect any funds provided to Subrecipient under this Agreement from loss due to theft, fraud and/or undue physical damage. Subrecipients that are self-insured shall maintain excess coverage over and above its self-insured retention limits.

H. Amendments

This Agreement may be amended at any time only by a written instrument signed by both Parties. Such amendments shall not invalidate this Agreement, nor relieve or release either Party from its obligations under this Agreement. The County may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Parties.

I. Suspension or Termination

Whatcom County may suspend or terminate this Agreement if Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to), the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and Federal awarding agency guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to Whatcom County reports that are incorrect or incomplete in any material respect.

J. Program Fraud & False or Fraudulent Statements or Related Acts

Subrecipient and any subcontractors must comply with 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, which shall apply to the activities and actions of Subrecipient and any subcontractors pertaining to any matter resulting from a contract.

K. Debarment / Suspension and Voluntary Exclusion

1. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

2. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. A contract award must not be made to parties listed in the Systems of Award Management ("SAM") Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov.

L. Governing Law and Venue. This Agreement shall be interpreted under, and governed by, the laws of the State of Washington, without regard to conflicts of laws principles. Any claim, suit, action, or proceeding brought in connection with this Agreement shall be in Whatcom County Superior Court and each party hereby irrevocably consents to the personal and subject matter jurisdiction of such court and waives any claim that such court does not constitute a convenient and appropriate venue for such claims, suits, actions, or proceedings.

VI. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

Subrecipient agrees to comply with and agrees to adhere to appropriate accounting principles and procedures, utilize adequate internal controls, and maintain necessary source documentation for all Eligible Expenses.

B. Duplication of Benefits; Subrogation

Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 132 Stat. 3442), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155).

If Subrecipient receives duplicate benefits from another source, Subrecipient must refund the benefits provided by the County back to the County.

C. Documentation & Recordkeeping

As required by 2 C.F.R. 200.331(a)(5), the County, or any duly authorized representative of The County, shall have the right of access to any records, documents, financial statements, papers, or other records of Subrecipient that are pertinent to this Agreement, in order to comply with any audits pertaining to funds allocated to Subrecipient under this Agreement. The right of access also includes timely and reasonable access to Subrecipient's personnel for the purpose of interview and discussion related to such documents. The right of access is not limited to the required retention period, as set forth in paragraph D below, but lasts as long as the records are retained.

D. Record Retention

Subrecipient shall retain sufficient records, which may include, but are not limited to financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to the Agreement to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of six (6) years from the date of submission of the final expenditure report. Records shall be made available upon request to the County, Commerce, state and federal auditors.

E. Internal Controls

Subrecipient must comply with 2 C.F.R. 200.303 and establish and maintain effective internal control over the funds allocated under this Agreement and provide reasonable assurance that the Subrecipient is managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission.

F. Personally Identifiable Information

Subrecipient must comply with 2 C.F.R. 200.303(e) and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. 200.82, and other information designated as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

G. Monitoring & Compliance

The County shall evaluate the Subrecipient's risk of noncompliance and monitor the activities of Subrecipient as necessary to ensure that the CRF funds are used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement. Monitoring of Subrecipient shall include reviewing invoices for eligible expenses, reviewing payroll logs, applicable contracts and other documentation that may be requested by the County to substantiate eligible expenses. Failure to submit proper documentation verifying eligible expenses may result in termination of this agreement and recoupment of awarded funds from the Subrecipient.

The Subrecipient shall be audited as required by 2 C.F.R. Part 200 Subpart F—Audit Requirements and shall provide a copy of the audit to the County. The County may take enforcement action against noncompliant Subrecipient as described in 2 C.F.R. 200.338 Remedies for noncompliance of this part and in program regulations.

H. Payment & Reporting Procedures

1. Payment Procedures

The County will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with the allocations and disbursement policies established by the County:

- a. The Subrecipient shall submit itemized invoices, and copies of receipts by October 31, 2020. The Subrecipient shall submit invoices to (include contract #):

Whatcom County Executive's Office
Attn: Tawni Helms
Whatcom County Courthouse, Suite 108
311 Grand Avenue
Bellingham, WA 98225

- b. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Subrecipient. The County may withhold payment of an invoice if the Subrecipient submits it after October 31, 2020.

- c. Invoices must include the following statement, with an authorized signature and date:

I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

- d. Duplication of Billed Costs or Payments for Service: The Subrecipient shall not bill the County for services performed or provided under this contract, and the County shall not pay the Subrecipient, if the Subrecipient 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.

VII. Personnel & Participation Conditions

Conflict of Interest

The Subrecipient shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

VIII. ATTACHMENTS

All attachments to this Agreement are incorporated as if set out fully. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

This Agreement contains the following attachments:

- Attachment A – Eligible Expenses

IX. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

X. WAIVER

Whatcom County's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of Whatcom County to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XI. CERTIFICATION

The Subrecipient hereby certifies that they have the authority and approval from their governing body, if applicable, to execute this Agreement and request reimbursement from Whatcom County from the allocation of the Coronavirus Relief Fund provided to Whatcom County for eligible expenditures. The Subrecipient further certifies the funds received for reimbursement from the Coronavirus Relief Funds were or will be used only to cover those costs that:

- a. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- b. Were not accounted for in the budget most recently approved as of March 27, 2020; and
- c. Were incurred during the period that begins on March 1, 2020, and ends on October 31, 2020.

Subrecipient understands any award of funds pursuant to this agreement must adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure and that the subrecipient has reviewed the guidance established by U.S. Department of the Treasury and certify costs meet the required guidance. Any funds expended by the Subrecipient in any manner that does not adhere to official federal guidance shall be returned to Whatcom County.

II. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Parties relating to Whatcom County's allocation of CRF funding to Subrecipient. This Agreement is subject to availability of Federal assistance under the Coronavirus Relief Funds as authorized under the CARES Act. Whatcom County has no legal requirement to provide funding to any Subrecipient.

XIII. SIGNATURE AUTHORITY

The following specific officers/officials, or their authorized designees, are required to sign this Agreement on behalf of the Subrecipient. Note: If this Agreement is signed by a designee, a duly authenticated delegation of authority evidencing the signer's authority to execute the Agreement for and on behalf of the Subrecipient must be attached to the Agreement for review by Whatcom County.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement on the dates hereafter set forth below.

LYNDEN SCHOOL DISTRICT, WASHINGTON

Signed:



Its Duly Authorized Agent

Printed Name: Dusty Gulleson

Title: IT Director

Date: 9/17/2020

WHATCOM COUNTY, WASHINGTON

Signed:

Its Duly Authorized Agent

Printed Name:

Title:

Date:

Approved as to form:

Signed: _____

Christopher Quinn
Senior Deputy Prosecuting Attorney for Whatcom County

EXHIBIT A

Eligible Expenses. The District shall ensure that the funds cover only those costs that are necessary and eligible to comply with public health measures and restrictions arising from the COVID-19 public health emergency. Under this agreement eligible expenses include:

- Internet connectivity and broadband service for District students
- Laptop computers necessary for distance learning

Eligible Cost Test. The District shall determine whether or not an expense is eligible using the Washington State Department of Commerce's five-part cost test as presented below. If all responses for the particular incurred cost are "true" for all five statements below, the District may deem the cost is eligible:

- (a) The expense is connected to the COVID-19 emergency;
- (b) The expense is "necessary;"
- (c) The expense is not to fill a shortfall in government revenues;
- (d) The expense is not funded through another budget line-item, allotment or allocation, as of March 27, 2020; and
- (e) The expense would not exist but for COVID -19 or would be for a "substantially different" purpose.