



## Memorandum of Understanding

### Memorandum of Understanding #: Lewis Economic Development Council Memorandum of Understanding COVID-19

This Memorandum of Understanding is entered into by and between Lewis County, herein after referred to as County, and Lewis Economic Development Council, herein after referred to as LEDC.

### Preamble

#### Purpose

The purpose of this Memorandum of Understanding (“MOU”) is to have LEDC, under the direction of County:

- Provide a proposal of committee members to the BOCC who will review nonprofit organization grant applications and make final determination on grant awards in relation to granted Coronavirus Relief Funds.

It would be in the best interest of the Lewis County residents for County to enter into an MOU with LEDC to provide these services upon receipt of Coronavirus Relief funding.

### Recitals

WHEREAS, COVID-19, a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency for COVID-19, beginning January 27, 2020; and

WHEREAS, on February 29, 2020, Washington Governor Jay Inslee declared a state of emergency in response to the continued and growing threat presented by COVID-19; and

WHEREAS, on March 13, 2020, the Lewis County Board of County Commissioners declared a present emergency, and continues to extend such order, which necessitates utilization of emergency powers granted pursuant to RCW 36.40.180 and RCW 38.52.070(2); and

WHEREAS, it is in the best interest if Lewis County to work with local organizations and businesses to coordinate acquiring necessary supplies for prevention, detection, treatment, and eradication of COVID-19; and

WHEREAS, Lewis County has been federal funding for costs incurred during the public health emergency with respect to the coronavirus disease during the period of March 1, 2020, thru October 31, 2020; and

WHEREAS, the Washington State Department of Commerce has awarded a grant for \$4,371,400.00 to address the costs incurred during the coronavirus public health emergency; and

WHEREAS, the parties agree to proceed as outlined herein and enter into this Memorandum of Understanding as a voluntary and mutually beneficial understanding.

## **Witnesseth**

NOW THEREFORE, in consideration of the mutual benefits and covenants hereafter contained, the parties agree hereto as follows:

### **General Terms and Conditions**

#### **1. Scope of LEDC's Services**

LEDC agrees to provide services, reports, and any material set forth in [Exhibit A: Statement of Work and Reporting Requirements](#) during the MOU term. No material, labor, or facilities will be furnished by LEDC unless otherwise provided for in this MOU.

#### **2. Accounting and Payment for Services**

Payment to LEDC for supplies and services rendered under this MOU shall be as set forth in [Exhibit B: Budget, Invoicing and Payment](#) attached hereto. Unless specifically stated in Exhibit B or approved in writing in advance by the County Representative for this MOU, County and LEDC will not reimburse the other for any costs or expenses incurred outside the performance of this MOU.

County and LEDC acknowledge that the entire compensation for this MOU is specified in Exhibit B and LEDC is not entitled to any County benefits including, but not limited to, vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to County employees outside of their respective entitlements and obligations.

#### **3. Assignment and Subcontracting**

Unless otherwise provided for in this MOU, no portion of this MOU may be assigned or subcontracted to any other individual, form, or entity without the express and prior written approval of the County MOU Representative.

**4. Administration**

This Memorandum of Understanding does not create a separate entity. This MOU shall be jointly administered by County and LEDC.

**5. LEDC Commitments, Warranties and Representations**

Any written commitment received from LEDC concerning this MOU shall be binding on LEDC, unless otherwise specifically provided herein with reference to this paragraph. Failure of LEDC to fulfill such a commitment shall render LEDC liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this MOU, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, process, LEDC's qualifications or experience, or options for future acquisition to remain in effect for a fixed period or warranties.

**6. Certification of Work**

All work submitted by LEDC shall be certified by LEDC and checked for errors and omissions. LEDC shall be responsible for the accuracy of the work, even if the work is accepted by the County.

**7. Debarment Certification**

LEDC, by signature to this MOU, certifies LEDC is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in this contract or any program agreement by any federal, state or local government or agency or by any special district. LEDC also agrees to include the above requirement in all subcontracts into which it enters.

**8. Regulations and Requirements**

This MOU shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth in Special Terms and Conditions.

**9. Public Records Law**

Each Party will fulfill their independent obligations, separately, under the Washington Public Records Act (chapter 42.56 of the Revised Code of Washington). In the event one Party fails to fulfill its obligations pursuant to this section and due in whole or in part to such failure a court of competent jurisdiction imposes a penalty upon the other Party for violation of the Public Records Act, the failing Party shall indemnify the other for that penalty, as well as for all costs and attorney fees incurred by the other Party in the litigation giving rise to such a penalty. The obligations created by this section shall survive the termination of this MOU.

**10. Open Public Meetings Law**

Each Party will fulfill their independent obligations, separately, under the Washington Open Public Meetings Act (chapter 42.30 of the Revised Code of Washington). In the event one Party fails to fulfill its obligations pursuant to this section and due in whole or in part to such failure a court of competent jurisdiction imposes a penalty upon the other Party for violation of the Open Public Meetings Act, the failing Party shall indemnify the

other for that penalty, as well as for all costs and attorney fees incurred by the other Party in the litigation giving rise to such a penalty. The obligations created by this section shall survive the termination of this MOU.

**11. Political Activity Prohibited**

None of the funds provided under this MOU shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or ballot measure. However, no person engaged to perform such services pursuant to this MOU shall be precluded from devoting income derived from such services to any lawful political activity, or to the support of a candidate for public office or of a ballot measure.

**12. Right to Review**

This MOU is subject to review by any federal or state auditor. The Parties or their designees shall have the right to review and monitor the financial and service components of this MOU by whatever means are deemed expedient by the MOU Representative. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County or LEDC agents or employees, inspection of all records or other materials which the Parties deem pertinent to the MOU and its performance, and any and all communications with or evaluations by service recipients under this MOU.

**13. Modifications**

Either party may request changes in the MOU. Any and all agreed modifications shall be in writing, signed by each of the parties.

**14. Termination**

Either Party may terminate this MOU upon 30 days' prior written notification to the other Party. If this MOU is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this MOU prior to the effective date of termination.

**15. Termination for Public Convenience**

Either Party may terminate the MOU, in whole or in part, whenever the terminating Party determines, in its sole discretion, that such termination is in the interests of the terminating Party. Whenever the MOU is terminated in accordance with this paragraph, the non-terminating Party shall be entitled to payment for actual work performed at unit MOU prices for completed items of work. The terminating Party shall make a reasonable, equitable adjustment in the MOU price for partially completed items of work, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this MOU by Party at any time during the term for convenience, shall not constitute a breach of MOU by the terminating Party.

**16. Suspension of Performance and Resumption of Performance**

In the event of government closure, suspension, or limitation of funding in any way after the effective date of this MOU and prior to normal completion, Parties may give notice to the other Party to suspend performance as an alternative to termination. Parties may

elect to give written notice to the other Party to suspend performance when the Party determines there is a reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow performance to be resumed prior to the end date of this MOU. Notice may include notice by facsimile or email to the MOU's Representative. The Parties shall suspend performance on the date stated in the written notice to suspend. During the period of suspension of performance, each Party may inform the other of any conditions that may reasonably affect the potential for resumption of performance. Notice may be contingent upon the occurrence or non-occurrence of a future event; *e.g.* the failure of the State of Washington to pass a budget by a date specified in the notice.

When the Parties determine that the funding insufficiency is resolved, the Parties may give written notice to resume performance and a proposed date to resume performance. Upon receipt of written notice to resume performance, the Parties will give written notice to the other as to whether it can resume performance, and, if so, the date upon which it agrees to resume performance. If Parties give notice that they cannot resume performance, the Parties agree that the MOU will be terminated retroactive to the original date of suspension of performance.

If the funding issue is not resolved, the Parties may terminate the MOU under the "Termination for Convenience" clause.

#### **17. Defense and Indemnity MOU**

Either Party shall defend, protect, and hold harmless the other Party or any officers or employees thereof, from and against all claims, suits, or action arising from any intentional or negligent act or omission of the other Party or any employee, agent or representative of the other Party or any subcontractor, while performing under the terms of this MOU.

#### **18. Insurance Coverage**

LEDC shall comply with all provisions described in [Exhibit C: Insurance Coverage](#), attached hereto.

#### **19. Resolution of Conflicts**

In the event of an inconsistency in this MOU, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- i. Applicable federal and state statutes and regulations
- ii. Special terms and conditions
- iii. Exhibits
- iv. General terms and conditions
- v. Any other provision of this MOU whether incorporated by reference or otherwise.

#### **20. Disputes, Venue and Choice of Law**

Both Parties agree that any disputes that arise under or relating to this MOU that cannot be resolved to the satisfaction of both parties shall be submitted to mediation before either party starts litigation in any form. An impartial third party acceptable to both the

County and LEDC will be appointed to mediate. Should the parties be unable to agree upon a mediator, then the dispute shall be mediated through the Washington Arbitration and Mediation Service, at its Tacoma office, and in accordance with the WAMS mediation rules. Each Party shall pay an equal percentage of the mediator's fees and expenses. Either Party may not use any funds received under this MOU to pay mediator's fees and expenses. The mediation shall be confidential in all respects, as allowed or required by law.

In the event that mediation does not resolve the dispute, the venue for any litigation arising under or relating to this MOU shall be in the courts of the State of Washington. This MOU shall be governed by the laws of the State of Washington, excepting only the choice of law rules of the State of Washington.

## **21. Records Maintenance**

Each Party shall maintain all books, records, documents, data and other evidence relating to this MOU and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this MOU. Both Parties shall retain such records for a period of seven (7) years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the seven- (7) year period, the records shall be retained for a period of seven (7) years after all litigation, claims, or audit findings involving the records have been finally resolved.

## **22. Recapture**

In the event a Party fails to perform services specified in this MOU in accordance with state laws, federal laws, and/or the provisions of this MOU, the other Party reserves the right to recapture funds in an amount required to compensate the other Party for the noncompliance in addition to any other remedies available at law or in equity. Repayment by the failing Party or refunds under this recapture provision shall occur within the timeframe specified by the other Party. In the alternative, the other Party may recapture such funds from payments due under this MOU.

## **23. Confidentiality**

Both Parties or any employee, agent or representative of the Parties or any subcontractor shall maintain the confidentiality of all information provided or acquired by the Parties in performance of this MOU, except upon prior written consent of the Attorneys for each Party or an order entered by a court after having acquired jurisdiction over the Parties. Each Party shall indemnify and hold harmless the other Party, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorney's fees, and costs resulting from a Party's breach of this provision.

**24. Information System Security**

LEDC shall protect and maintain all confidential information gained by reason of this contract against unauthorized use, access, disclosure, modification or loss. Personal and/or medical information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract.

**25. Protection of Personal Information**

LEDC shall not use, publish, transfer, sell or otherwise disclose any confidential information gained by reason of this contract for any purpose that is not directly connected with the Contractor's performance of the services contemplated hereunder except as provided by law, received by LEDC pursuant to section 8 of this contract or with the prior written consent of the individual or personal representative of the individual who is the subject of the personal information. Upon request by the County or at the end of the contract term, or when no longer needed, LEDC shall return the confidential information or certify in writing that LEDC destroyed the information in a manner that cannot be reconstructed.

**26. Ethics/Conflicts of Interest**

In performing under this MOU, both Parties will assure compliance with the Ethics in Public Service Act (Chapter 42.52 Revised Code of Washington), and any other applicable state or federal law related to ethics or conflicts of interest.

**27. Information System Security**

Both Parties shall protect and maintain all confidential information gained by reason of this MOU against unauthorized use, access, disclosure, modification or loss. Personal and/or medical information collected, used or acquired in connection with this MOU shall be used solely for the purposes of this MOU.

**28. MOU Amendments**

No amendment, modification or renewal shall be made to this MOU unless set forth in a written Memorandum of Understanding Amendment, signed by both parties. Work under a Memorandum of Understanding Amendment shall not proceed until both Parties duly executes the Memorandum of Understanding Amendment.

**29. Severability**

If any term or condition of this MOU or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this MOU are declared severable.

**30. Conformance**

If any provision of this MOU violates any statute or rule of law of the state of Washington or of the United States of America, it is considered modified to conform to that statute or rule of law.

**31. Waiver**

Waiver of any breach or condition of this MOU shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this MOU shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the party granting such a waiver.

**32. Survival**

The terms and conditions contained in this MOU will survive the completion, cancellation, termination or expiration of the MOU.

**33. Entire MOU**

This written MOU along with attached exhibits and the documents and terms incorporated herein by Section 23 of this MOU, represents the entire MOU between the parties.

**34. Parties**

Each party to this MOU shall have an MOU representative. Each party may change its representative upon providing written notice to the other party. The parties' MOU representatives for this MOU are:

For the County:

Erik Martin

Erik.martin@lewiscountywa.gov

For Lewis Economic Development Council:

Daniel Rich

360-748-0114

**35. Authorization**

Only the Lewis County Board of County Commissioners, Director of Lewis County Public Health & Social Services, or its designated MOU Representative identified herein, shall have the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this MOU with respect to the rights and responsibilities of County. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this MOU is not effective or binding unless made in writing and signed by the Lewis County Board of County Commissioners, County Manager, Director of Lewis County Public Health & Social Services, or its MOU Representative.

Only the LEDC Board Chair, or its designated MOU Representative identified herein, shall have the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this MOU with respect to the rights and responsibilities of LEDC. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this MOU is not effective or binding unless made in writing and signed by the LEDC Board Chair, or its MOU Representative.



IN WITNESS THEREOF, this executed on \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Accepted:  
Lewis County

Accepted:  
Lewis Economic Development Council

\_\_\_\_\_  
Erik Martin  
*Lewis County Manager*

\_\_\_\_\_  
[NAME]  
[TITLE]

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM:  
JONATHAN MEYER, Prosecuting Attorney

\_\_\_\_\_  
Amber Smith, WSBA# 53121



## Exhibit A: Statement of Work and Reporting Requirements

The purpose of this **Statement of Work** is to detail the work to be performed by LEDC and the methods and content for reporting progress by LEDC in fulfilling all duties encompassed in this MOU.

The term of this MOU shall commence on \_\_\_\_\_ and terminate on October 31, 2020.

LEDC shall administer funds awarded hereunder, to support a variety of activities and services including, but not limited to:

Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as expenditures related to the provision of grants to nonprofit organizations to reimburse the costs of business interruption caused by required closures.

Specific activities requested shall include, but not be limited to, the following:

| Task Number | Task/Activity/Description                        | Deliverables/Outcomes  | Reporting Requirement | Due Date |
|-------------|--|--|-----------------------|----------|
| 1           | Establish a committee to review and award grants | <ul style="list-style-type: none"> <li>Select a committee</li> <li>It is suggested that committee members who will be representative of the three Lewis County Board of County Commissioners respective districts be selected</li> <li>Lewis County recommends Larry McGee, Annalee Tobey, and Teri Zambone to serve as representative members.</li> </ul> |                       |          |

| Task Number | Task/Activity/Description                             | Deliverables/Outcomes  | Reporting Requirement | Due Date |
|-------------|---|--|-----------------------|----------|
| 2           | Establish a process for reviewing and awarding grants | <ul style="list-style-type: none"> <li>Develop and establish an application for nonprofit organizations to apply for grant funds</li> <li>Develop and establish procedure and criteria for awarding grant funds</li> </ul> |                       |          |

| Task Number | Task/Activity/Description                    | Deliverables/Outcomes  | Reporting Requirement | Due Date |
|-------------|--|--|-----------------------|----------|
| 3           | Establish accounting and reporting practices | <ul style="list-style-type: none"> <li>Establish a subaccount for accounting administration of CRF funds</li> <li>Establish procedure, database, and collection of necessary accounting data required for administration of CRF funds to return to Lewis County</li> </ul> |                       |          |

## Exhibit B: Budget, Invoicing, and Payment

Lewis County shall pay an amount not to exceed two hundred thousand dollars (\$200,000) to LEDC for work as described in Exhibit A, in subject to conditions set forth in this Exhibit B: Budget, Invoicing, and Payment.

### 1. Budget Detail

| Item                          | Budget  |
|-------------------------------|---------|
| Nonprofit Organization Grants | 200,000 |

### 2. Compensation

Payment to LEDC for services rendered under this MOU shall be as set forth in Exhibit B. Where Exhibit B requires payments by Lewis County, payment shall be made on a reimbursement basis, supported, unless otherwise provided in Exhibit B, by documentation of units of work actually performed (time sheets) and amounts earned, including where appropriate, the total number of hours for the month, and total dollar payment requested.

Costs allowable under this MOU are actual expenditures according to an approved budget up to the maximum amount stated above. LEDC shall use federal cost principles specified in OMB Circular A-110 "Cost Principles Applicable to Grants, Contracts and other Agreements" with non-profit organizations as applicable. LEDC shall include this last paragraph in any subcontracts.

Line-item adjustments to the budget must be requested in writing by LEDC 45 days prior to invoicing based on the requested adjustment(s). County will notify LEDC of approval or denial prior to invoice period.

County may withhold reimbursement payment if LEDC fails to:

- Comply with reporting Exhibit A reporting requirements; or
- Submit required invoices and supportive documentation to Lewis County.

LEDC's failure to submit invoices as specified is grounds for the County to terminate the MOU as provided herein.

### 3. Invoice Timeframe

LEDC shall submit invoices to the County MOU Representative identified herein or to other such person identified by the County MOU Representative. LEDC shall submit a detailed list of all grants and award amounts prior to receiving payment for distribution to awardees.

### 4. Eligible Use of Funds

Funding awarded under this MOU may only be used for activities described in Exhibit A.

## **5. Duplicate Payment**

LEDC certifies that work to be performed under this MOU does not duplicate any work to be charged against any other Lewis County MOU, subcontract or funding from any other source.

## **6. Audit**

### **i. General Requirements:**

LEDC is to procure audit services based on the following guidelines:

- a. LEDC shall maintain its records and accounts so as to facilitate the audit requirement.
- b. As applicable, LEDC shall be required to have an audit and must ensure all audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); including, but not limited to, the Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.
- c. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. LEDC must respond to County requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

ii. The Office of the State Auditor shall conduct the audit.

iii. LEDC shall include the above audit requirements in any grant awardings.

iv. In all cases, LEDC's financial records must be available for review by County.

## **7. Future Non-Allocation of Funds**

If sufficient funds are not appropriated or allocated for payment under this MOU for any future fiscal period, neither Party will be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to either Party in the event this provision applies.

## **8. Errors and Omissions Uncompensated**

In the event of any errors or omissions by the Parties in the performance of any work required under this MOU, the Parties shall make any and all necessary corrections without additional compensation.



## **Exhibit C: Insurance Coverage**

LEDC shall provide insurance coverage as set out in this Exhibit to protect the County should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of LEDC or subcontractor, or agents of either, while performing under the terms of this MOU.

All required insurance shall be issued by an insurance company authorized to do business within the State of Washington. The insurance shall name the County and its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. LEDC shall instruct the insurers to give the County thirty (30) calendar days advance notice of any insurance cancellation or modification.

LEDC shall submit to the County within fifteen (15) calendar days of the MOU start date, proof of insurance identifying Lewis County as Primary, Non Contributory, additionally Insured, with endorsement(s) for additional insured as indicated below, which outlines the coverage and limits defined in this insurance section. During the term of the MOU, LEDC shall submit renewal certificates with endorsements not less than thirty (30) calendar days prior to expiration of each policy required under this section.

LEDC shall provide insurance coverage that shall be maintained in full force and effect during the term of this MOU, as follows:

### **1. Commercial General Liability Insurance Policy**

Provide a Commercial General Liability Insurance Policy, including grant liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of MOU activity but no less than \$1,000,000 per occurrence. Additionally, LEDC is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

### **2. Professional Liability**

Provide a Professional Liability Insurance Policy written on an occurrence basis in adequate quantity to protect against errors and omissions claims arising out of an MOU activity.

### **3. Automobile Liability**

In the event that performance pursuant to this MOU involves the use of vehicles, owned or operated by LEDC or its subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

### **4. Fidelity Insurance**

Every officer, director, employee, or agent who is authorized to act on behalf of LEDC for the purpose of receiving or depositing funds into program accounts or issuing

financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- i. The amount of fidelity coverage secured pursuant to this MOU shall be \$100,000 or the highest of planned reimbursement for the MOU period, whichever is greatest. Fidelity insurance secured pursuant to this paragraph shall name LEDC as beneficiary.
- ii. Subcontractors that receive \$10,000 or more per year in funding through this MOU shall secure fidelity insurance as noted above. Fidelity insurance secured by subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.

#### **5. Industrial Insurance Waiver**

LEDC shall comply with all applicable provisions of Title 51 Revised Code of Washington, Industrial Insurance. If LEDC fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, County may collect from LEDC the full amount payable to the Industrial Insurance Accident Fund. County may deduct the amount owed by LEDC to the accident fund from the amount payable to LEDC by County under this MOU, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from LEDC.

