

May 20, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Requesting approval to execute an Intergovernmental Agreement between Health, Housing and Human Services Department (H3S) and the Housing Authority of Clackamas County (HACC) to fund implementation costs for the Supportive Housing Services (SHS) Program

Purpose/Outcomes	Approval of the IGA between H3S and HACC to fund implementation costs for the SHS Program.
Dollar Amount and Fiscal Impact	Total \$400,000
Funding Source	H3S Affordable Housing & Services Fund-County General funds
Duration	One-time grant payment within thirty (30) days of signing
Previous Board Action	11/3/2020 – HACC requested 1.1M loan in SHS startup funding. Board requested staff to explore other loan/grant options. 12/15/2020 – HACC requested \$1.1M in SHS startup funds in a combination of a \$400,000 as an Affordable Housing and Services Fund grant from H3S, a \$300,000 loan from SSD and \$400,000 loan from CFCC through internal H3S funds. (no action was taken) 2/22/21 – SHS Update and Next Steps – Team needs to be built in order to be ready to move funding out into the community quickly. 4/13/21 - Approval of the SHS Local Implementation plan that will be used to frame the planning work this team will be engaged in.
Strategic Plan Alignment	1. Ensure safe, healthy and secure communities
Contact Person	Rodney Cook, H3S Interim Director 503-347-9326
Contract No.	N/A

BACKGROUND:

The Health, Housing and Human Services Department (H3S) requests approval to execute an Intergovernmental Agreement with The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department. This IGA would transfer PLP Affordable Housing and Services funding in the amount of \$400,000 to HACC, to cover the start-up costs associated with the Supportive Housing Services (SHS) program. HACC has been engaged in planning efforts since the measure was passed to ensure Clackamas County is eligible for funding from Measure 26-210 and prepared to begin serving our most vulnerable neighbors as soon as funding begins to flow from Metro.

Measure 26-210 is a tax on high income earners and high profit businesses that was passed by Metro region voters last May. Although tax collection has already begun accruing, it is anticipated

that it could take some time before the new tax will reach full taxation. Limited funding is scheduled to begin flowing to Clackamas County quarterly starting in July 2021. Revenue estimates are \$24.5M for year one and \$51M at full taxation. In order to ensure an effective and timely implementation, it is imperative that an SHS team be established as soon as possible.

PLP Affordable Housing and Services funds are authorized for the use of housing and homeless services and are the source for this \$400,000 grant from H3S to HACC. This one time up-front investment of PLP Affordable Housing and Services funds aligns well with the purpose of this funding source. The funding will be used to cover implementation costs and fill the funding gap, incurred by HACC, as they have carried out the essential preparation and planning work required for funding eligibility and readiness. A staffing plan was approved to ensure our planning and preparation was completed as required. The required upfront work to prepare for SHS funding includes staffing costs, contracting with consultants who provided capacity for culturally specific community engagement, assistance with Local Implementation Plan development and other preparation work. Planning for this new fund that included community partners and our jurisdictional partners to ensure we are prepared to implement this new programming reflects our intention to improve our regional work while retaining our local unique needs.

New positions to support this work include:
Human Services Manager
Senior Management Analyst
Senior Policy, Performance & Research Analyst
Senior Accountant

RECOMMENDATION:

Staff recommends the approval of the IGA between H3S and HACC to help cover the implementation costs in planning and preparing for the SHS Program and recommends the Board authorize Jill Smith, HACC Executive Director, to sign on behalf of the Housing Authority of Clackamas County Board and Commissioner Tootie Smith, Chair, to sign on behalf of Clackamas County Board of Commissioners.

Respectfully submitted,



Rodney A. Cook, Interim Director

**INTERGOVERNMENTAL AGREEMENT
BETWEEN HOUSING AUTHORITY OF CLACKAMAS COUNTY
AND CLACKAMAS COUNTY**

THIS AGREEMENT (this "Agreement") is entered into between the Housing Authority of Clackamas County ("HACC") and Clackamas County, through its Health, Housing and Human Services Department, Administration Division ("County"), collectively referred to as the "Parties" and each a "Party", for the funding of program implementation costs in support of the Clackamas County Supportive Housing Services Program which will be funded ongoing by the Metro Measure 26-210. HACC is a Public Corporation, established under the Federal Housing Act of 1937 and the provisions of Chapter 456 of the Oregon Revised Statutes.

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

HACC has requested, and County has agreed to provide, a one-time transfer of funds to pay for accruing startup costs required to ensure readiness to implement the Clackamas County Supportive Housing Services Program as soon as Metro Measure 26-210 funding begins July 1, 2021. Measure 26-210 tax will be collected starting the first quarter of 2021, and funding is scheduled to be made available to HACC on a quarterly basis starting on July 1, 2021. Funding is anticipated to increase as the Measure reaches full taxation.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution by both parties (the "Effective Date"), and shall expire upon the completion of each and every obligation of the Parties set forth herein.
2. **Use of Funds.** HACC will use the funds received from County under this Agreement to pay the staff salaries as well as consulting contracts entered into with community partners for community engagement, committee oversight, Local Implementation Plan preparation and other planning work plan as described in Exhibit A, attached hereto and incorporated by this reference herein.
3. **Consideration.** The County agrees to pay HACC, from available and authorized funds, a sum not to exceed **Four Hundred Thousand Dollars (\$400,000.00)** to pay for staff salaries as well as consulting contracts entered into with community partners for community engagement, committee oversight, Local Implementation Plan preparation and other planning work described in Exhibit A. The County shall tender payment of the \$400,000.00 to HACC in a single payment due within thirty (30) days from the Effective Date of this Agreement. The transfer of the \$400,000.00 by County to HACC is not a loan, but a one-time grant of funds for HACC. HACC shall not be liable to County for repayment of the \$400,000.00, provided the funds are used pursuant to the terms and conditions of this Agreement.
4. **Representations and Warranties.**
 - A. *HACC Representations and Warranties:* HACC represents and warrants to County that HACC has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of HACC enforceable in accordance with its terms.

- B. *County Representations and Warranties:* County represents and warrants to HACC that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Termination.

- A. Either the County or HACC may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or HACC may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or HACC shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either Party may terminate this Agreement in the event that Party fails to receive expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either performance under this Agreement is prohibited or a Party is prohibited from paying for the positions described in Exhibit A from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

- 6. Indemnification.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend HACC, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, HACC agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of

HACC or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which HACC has a right to control.

7. **Insurance.** The County is self-insured and HACC is insured by the Housing Authority Risk Retention Pool (HARRP). The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
8. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

Ed Johnson or their designee will act as liaison for the County.

Contact Information:

Health, Housing and Human Services, 2051 Kaen Road, Oregon City, OR 97045
ejohnson@clackamas.us, 503-742-5325

Elizabeth Miller or their designee will act as liaison for HACC.

Contact Information:

Housing Authority of Clackamas County, PO Box 1510, Oregon City, OR 97045
emiller@clackamas.us, 503-655-8279

9. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and HACC that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. HACC, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.

- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** HACC shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. HACC shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, HACC shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **No Third-Party Beneficiary.** HACC and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

- J. **Subcontract and Assignment.** HACC shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve HACC of any of its duties or obligations under this Agreement.
- K. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- L. **Survival.** All provisions in Sections 4, 6, and 9 (A), (C), (D), (E), (F), (G), (H), (I), (L), (N), and (P) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- M. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- N. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- O. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- P. **Time is of the Essence.** County agrees that time is of the essence in the performance this Agreement.
- Q. **Force Majeure.** Neither HACC nor County shall be held responsible for delay or default caused by events outside of HACC or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, HACC shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- R. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

Signatures on following page

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

**HOUSING AUTHORITY OF
CLACKAMAS COUNTY BOARD**

Commissioner Tootie Smith Chair
Commissioner Sonya Fischer
Commissioner Paul Savas
Commissioner Martha Schrader
Commissioner Mark Shull
Resident Commissioner Ann Leenstra

Signing on Behalf of the Housing Authority Board

Jill Smith, Executive Director
Housing Authority of Clackamas County

Date

CLACKAMAS COUNTY BOARD

Commissioner Tootie Smith, Chair
Commissioner Sonya Fischer
Commissioner Paul Savas
Commissioner Martha Schrader
Commissioner Mark Shull

Chair, Board of County Commissioners

Date

Exhibit A SCOPE OF WORK

The Housing Authority of Clackamas County ("HACC") will utilize funding received from this agreement to pay for accruing and ongoing startup costs required to ensure readiness to implement the Clackamas County Supportive Housing Services Program as soon as Metro Measure 26-210 funding begins July 1, 2021. The Measure 26-210 tax will be collected starting the first quarter of 2021, however, it is anticipated it will take time for this new tax to reach full taxation. Funding is scheduled to be available to HACC on a quarterly basis starting on July 1, 2021. Funding is anticipated to increase as taxpayers become familiar with the new tax with year one projections of \$24.5M and full taxation projections of \$51M.

This \$400,000 will cover the accruing startup costs associated with planning for the Supportive Housing Program. These costs include the following positions as well as consulting contracts entered into with community partners for community engagement, committee oversight, Local Implementation Plan preparation and other planning work. Much of this work began when the Measure passed in May 2020 in order for HACC to meet eligibility requirements for Metro Measure Funding and will continue to ensure HACC is ready to implement the program as soon as funding begins.

HACC Deputy Director
Human Services Manager
Senior Management Analyst
Senior Policy, Performance & Research Analyst

