

COPY

February 21, 2019

Housing Authority Board of Commissioners  
Clackamas County

Members of the Board:

Approval to execute an Easement Agreement between  
Housing Authority of Clackamas County and Nathan C. Miller and McKenna Miller

<b>Purpose/Outcomes</b>	Approval to execute an Easement Agreement between Housing Authority of Clackamas County and Nathan C. Miller and McKenna Miller
<b>Dollar Amount and Fiscal Impact</b>	No expense to Housing Authority
<b>Funding Source</b>	N/A
<b>Duration</b>	Indefinite - Easement stays with the land unless voluntarily terminated by both parties
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	1. Efficient and effective services Build public trust through good government
<b>Contact Person</b>	Jill Smith, Executive Director, Housing Authority 503-742-5336
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department is requesting approval to execute an Easement Agreement between HACC and Nathan C. Miller.

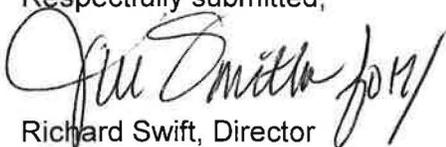
Nathan C. Miller and McKenna Miller are the owners of property located at 18714 SE River Road, Milwaukie, Oregon, which abuts to HACC's property. The sewer line that runs lateral from the street to the owner's home runs across and beneath HACC's driveway. As a result, the Millers have requested that an easement be established and recorded so the owners are authorized to keep their sewer line in place and may conduct repairs to their sewer line, as needed.

County counsel has prepared and negotiated on HACC's behalf an agreement acceptable to HACC staff and the owners. HACC will require the owners to pay HACC's attorney fees for preparation of the easement agreement. This will ensure the transaction is budget neutral.

**RECOMMENDATION:**

Staff recommends the approval of the attached Easement Agreement with the Millers. Staff also recommends the board authorize the Executive Director of the Housing Authority to sign the Easement Agreement.

Respectfully submitted,



Richard Swift, Director  
Health, Housing & Human Services



**After recording return to:**

Nathan C. Miller  
18710 SE River Road  
Milwaukie, OR 97267

**EASEMENT AGREEMENT**

**RECITALS**

1. The Housing Authority of Clackamas County (hereafter "Grantor") is the record owner of property described as follows: Section 19, Township 2S Range 2E Quarter BA, Tax Lot 06100, and generally located at 18714 SE River Road, in the City of Milwaukie, Clackamas County, Oregon, Milwaukie, Oregon, 97267 (hereafter "Grantor's Property") (the servient estate);
2. Nathan C. Miller and McKenna L. Miller (hereafter "Grantees") are the record owners of property described as follows: Section 19, Township 2S Range 2E Quarter BA, Tax Lot 06101, and generally located at 18710 SE River Road, in the City of Milwaukie, Clackamas County, Oregon, Milwaukie, Oregon, 97267 (hereafter "Grantees' Property") (the dominant estate);
3. The parties to this Agreement intend to create a perpetual nonexclusive easement wherein the sewer line, draining from Grantees' property, shall run under the surface of, and across Grantor's property, and shall terminate at the edge of Grantor's property where it meets SE River Road, as described below. Such easement shall be appurtenant to and benefit Grantees' property, and shall burden Grantor's property.
4. The parties desire to clarify responsibilities regarding use and maintenance of the easement and that portion of the Grantors' property that is burdened by this Easement Agreement;
5. In consideration of the promises in this Agreement, NOW, THEREFORE, the parties agree as follows:

**AGREEMENT**

1. **Grant and Scope of Easement.** For and in consideration of \$438.96, Grantor hereby grants to Grantees, and their successors in title, a perpetual nonexclusive easement solely for purposes of locating and maintaining a private sewer line, consistent with the manner in which the easement property is currently used by Grantees, over Grantor's Property in the location described in Exhibit 1, attached hereto and incorporated by this reference herein (the "Easement").

This Easement does not grant or convey to Grantees any interest in the surface of the Easement area except as is reasonably necessary for the location and maintenance of Grantees' private sewer line. Grantees may not place any permanent or temporary structures on Grantor's Property without the express written consent of Grantor.

## Easement Agreement

Any use of Grantor's Property other than those reasonably necessary for the location and maintenance of a private sewer line, in the location described in Exhibit 1, is strictly prohibited and shall constitute a trespass.

2. **Relocation of Easement.** The location of the Easement shall be as described Exhibit 1 until such time as Grantor provides written notice to Grantees of Grantor's intent to relocate the location of the Easement described herein. Grantor shall provide notice in writing at least 30 days in advance of any relocation of the Easement described herein. Grantor may relocate the Easement anywhere on Grantor's Property and Grantees may not object to any relocation or alteration so long as the relocated Easement is sufficient for providing a private sewer line, according to commercially reasonable practices and standards, to Grantees' Property. The parties shall construe this Agreement to correctly reflect the location of the Easement in the event Grantor exercises its rights under this section and Grantees shall consent to any other amendments to this Agreement that may be necessary as a result of the modification or alteration.
3. **Covenant Not to Interfere.** Grantees' use of the Easement shall, to the maximum extent practical, be performed in a manner that it does not interfere with, damage, disturb, hinder, or prevent the use and enjoyment of Grantor's Property.

In the event Grantees' rights granted hereunder requires use of the Easement in a manner that does interfere, damage, disturb, hinder, or prevent use of Grantor's Property, the parties shall agree, in writing, to a mutually acceptable date and time for such use to occur in a manner that limits the impact to Grantor to the maximum extent practical.

4. **Nonexclusive, Revocable License.** Grantor hereby issues to Grantees a nonexclusive, revocable at will license to temporarily use a portion of Grantor's Property for the purpose of accessing the Easement. The portion of Grantor's Property subject to this nonexclusive, revocable at will license is generally described as Grantor's driveway, as depicted in **Exhibit 2**, attached hereto and incorporated by this reference herein. This nonexclusive, revocable at will license shall be Grantees' sole means of accessing the Easement from Grantor's Property. Except in the case of an emergency, or with Grantor's written consent, Grantees' use of Grantor's driveway under this license may only be exercised during Grantor's normal business hours (Monday – Thursday, 7:00 a.m. to 6 p.m.).
5. **Appurtenant.** The Easement shall be appurtenant to the Grantees' Property, shall run with the land, and the terms and conditions of this Agreement shall inure to the benefit of the parties' heirs, successors, and assigns.
6. **Waiver.** Grantees shall not have any rights, and hereby expressly waives any claims to ownership to any portion of Grantor's property, including that portion subject to any easement, in law or in equity, including but not limited to any claim based on adverse possession.

## Easement Agreement

7. **Repair and Maintenance.** Grantees are solely responsible for the costs of maintaining, repairing, and improving the Easement. Such maintenance and repairs shall be performed by Grantees as required, and shall be done on a prompt, diligent and regular basis. If Grantees fails to perform any such repairs as required, Grantor, upon prior written notice to the Grantees, may cause such work to be done, and Grantees shall reimburse Grantor for all sums Grantor expended to remedy such failure. Grantees shall be responsible to restore any property disturbed by their use of the Easement to its original condition upon completion of work or use and shall be responsible for any damage caused by same.
8. **Damage Caused by Grantor.** Grantor shall be responsible for any damage caused to Grantees' private sewer line within the Easement by Grantor's negligent acts or omissions. If Grantor, or its successors and/or purchasers, fail to perform any such repairs as required, Grantees, upon prior written notice to the Grantor, may cause such work to be done, with a right of reimbursement for all sums reasonably necessary and properly expended to remedy such failure.
9. **Compliance with Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. Grantees further represents and warrants that they will not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Easement or Grantor's Property. The term Hazardous Substance shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any applicable environmental law.
10. **Termination.** This Agreement shall terminate, and the Easement extinguished, by operation of law if the following events occur: (1) Grantees remove or disconnect the sewer line, and work to rebuild or reconnect is not commenced within thirty (30) days after the date of removal or disconnection; (2) the Easement is not used by Grantees for three (3) consecutive years; (3) Grantees' Property is unoccupied, unused, or otherwise abandoned for three (3) consecutive years; or (4) by written mutual consent of the parties. Grantor may terminate this Agreement, and extinguish this Easement, if, after thirty (30) days' notice and opportunity to cure, Grantees violates any term or condition of this Agreement including, but not limited to, exceeding the scope of use of the Easement. If this Agreement is terminated and the Easement extinguished, Grantor may, without notice to Grantees, record an easement termination document in the real property records of Clackamas County, Oregon.

After termination of this Agreement and extinguishment of the Easement, Grantees, at Grantees' expense, shall upon demand, remove any and all of Grantees' property from the Easement and restore the Easement and surrounding area to Grantor's reasonable satisfaction.

11. **Indemnification.** Grantees shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, use of, access over, or maintenance of the Easement, or from any act, omission, or

## Easement Agreement

neglect of Grantees, their agents or employees. Grantees agree to indemnify, hold harmless and defend the Grantor, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Grantees or the Grantees' agents or employees.

However, neither Grantees nor any attorney engaged by Grantees shall defend the claim in the name of Grantor or any department of the Grantor, nor purport to act as legal representative of Grantor or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for Grantor, nor shall Grantees settle any claim on behalf of Grantor without the approval of the Clackamas County Counsel's Office. Grantor may, at its election and expense, assume its own defense and settlement.

12. **Prior encumbrances.** This Easement is nonexclusive and is subject to all other prior easements or encumbrances, whether or not such interests are recorded.
13. **Real Property Taxes.** Each owner of property described herein shall pay any and all real property taxes assessed to that owner's parcel without apportionment thereof relating to this easement.

### 14. General Provisions

- a. **Time of Essence.** Time is of the essence of each and every provision of this Agreement.
- b. **Non-Liability of Officials and Employees.** Notwithstanding any other provision herein, no member, elected official, employee, shareholder, director, officer, agent or representative of any of the parties (or their respective successors and assigns) shall be personally liable to the other party (or its successors and assigns) in the event of any default or breach of any provision of this Agreement by any party (or its successors and assigns).
- c. **Non-Waiver of Governmental Rights.** Subject to the terms and conditions of this Agreement, Grantor is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the Easement or Grantees' Property including but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.
- d. **Notices.** All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email.

## Easement Agreement

The address of each party to this Agreement for purposes of notice shall be as follows:

Executive Director of the  
Housing Authority of Clackamas County  
Phone: (503) 650 3128  
P.O. Box 1510  
13900 S. Gain St.  
Oregon City, OR 97045

Nathan C. Miller and McKenna L. Miller  
18710 SE River Road  
Milwaukie, POR 97267

Each party may change its address for notice by giving not less than fifteen (15) days' prior notice of such change to the other party in the manner set forth above.

- e. **Relationship.** Nothing contained in this Agreement will create a joint venture or partnership, establish a relationship of principal and agent, establish a relationship of employer and employee, or any other relationship of a similar nature between the Grantees and Grantor.
- f. **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.
- g. **Integration.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the parties on the subject matter of this Agreement. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
- h. **Further Assurances.** The parties to this Agreement agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.
- i. **Force Majeure.** Notwithstanding any other provision herein, no party will be liable for breach or default of this Agreement due to delay in performing its obligations under this Agreement to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, strikes, labor disputes, volcanoes, fire, flood, earthquake, weather, acts of God, epidemic, acts of any

## Easement Agreement

federal, state or local government or agency, or any other event beyond the reasonable control of the affected party.

- j. **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon with giving effect to the conflict of laws provisions thereof.
  - k. **Mediation Option.** The parties acknowledge that mediation may help the parties to settle their dispute. Therefore, in case of dispute under this Agreement, either party may propose mediation whenever appropriate by any mediation process or mediator as the parties may mutually agree upon (each in their sole discretion).
  - l. **Changes in Writing.** This Agreement and any of its terms may only be changed, waived, discharged or terminated by written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.
  - m. **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
  - n. **Invalidity of Provisions.** In the event any provision of this Agreement is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.
  - o. **No Attorneys' 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.
  - p. **Neutral Construction.** This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.
  - q. **Captions.** The captions of the section and subsections are used solely for convenience and are not intended to alter or confine the provisions of this Agreement.
15. **Remedies.** In the event of a breach of this agreement, the parties shall have all remedies available at law or equity.
16. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent

Easement Agreement

upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

Each of the parties hereto has had the opportunity to consult with legal counsel regarding the terms of this Agreement, and agrees to all its terms and conditions.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement, effective as of the last date of signature set forth below.

HOUSING AUTHORITY OF CLACKAMAS COUNTY

\_\_\_\_\_  
By: \_\_\_\_\_ (name)  
Grantor

STATE OF OREGON            )  
  ) ss  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by the above named \_\_\_\_\_ as his/her voluntary act.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

Easement Agreement

\_\_\_\_\_  
By: Nathan C. Miller      Date  
    Grantee

STATE OF OREGON            )  
  ) ss  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2019 by the above named Nathan C. Miller as his voluntary act.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
By: McKenna L. Miller      Date  
    Grantee

STATE OF OREGON            )  
  ) ss  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2019 by the above named McKenna L. Miller as her voluntary act.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

# Exhibit 1

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*[Signature]*  
OREGON  
FEBRUARY 08, 2000  
JOHN R. WADE  
59999 LS

EXPIRES: 06/30/20

HOUSING AUTHORITY OF CLACKAMAS COUNTY  
DOCUMENT NUMBER 80 39475  
TAX LOT 6100  
TAX MAP 2 2E 19BA



TAX LOT 6200  
TAX MAP 2 2E 19BA

CHRISTOPHER B. CHAMBERLAIN  
DOCUMENT NUMBER 98-058413  
TAX LOT 6101  
TAX MAP 2 2E 19BA

SEWER EASEMENT  
1038 SQ. FT.

TAX LOT 6000  
TAX MAP 2 2E 19BA

5.00'  
5.00'  
10.00'

IRON PIPE

POINT OF BEGINNING

N46°37'00"W  
20.83'

30.00'

RIVER ROAD  
(60.00' WIDE)

30.00'

**SUMMIT**  
LAND SURVEYORS  
12950 SW PACIFIC HIGHWAY, SUITE 255  
TICARD, OR 97223  
PHONE & FAX: 503.928.5589

## SEWER EASEMENT EXHIBIT

SITUATED IN THE NORTHWEST 1/4 OF SECTION 19,  
TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN,  
CLACKAMAS COUNTY, STATE OF OREGON

JOB NO.:  
**998-283**

DATE:  
**01/10/19**

SCALE:  
**1"=30'**

PREPARED FOR:  
**ALISA CHAMBERLIN**

# Exhibit 2

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
FEBRUARY 08, 2000  
JOHN R. WADE  
59999 LS

EXPIRES: 06/30/20



HOUSING AUTHORITY OF CLACKAMAS COUNTY  
DOCUMENT NUMBER 80 39475  
TAX LOT 6100  
TAX MAP 2 2E 19BA

TAX LOT 6200  
TAX MAP 2 2E 19BA

CHRISTOPHER B. CHAMBERLAIN  
DOCUMENT NUMBER 98-058413  
TAX LOT 6101  
TAX MAP 2 2E 19BA

**Area for access to  
sewer lateral.**  
(inside dotted line)

SEWER EASEMENT  
1038 SQ. FT.

TAX LOT 6000  
TAX MAP 2 2E 19BA

POINT OF TERMINUS

5.00'

5.00'

10.00'

IRON PIPE

POINT OF BEGINNING

N46°37'00"W  
20.83'

30.00'

RIVER ROAD  
(60.00' WIDE)

30.00'



12950 SW PACIFIC HIGHWAY, SUITE 255  
TIGARD, OR 97223  
PHONE & FAX: 503 928 5589

## SEWER EASEMENT EXHIBIT

SITUATED IN THE NORTHWEST 1/4 OF SECTION 19,  
TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN,  
CLACKAMAS COUNTY, STATE OF OREGON

JOB NO:  
998-283

DATE:  
01/10/19

SCALE:  
1"=30'

PREPARED FOR:  
ALISA CHAMBERLIN

COPY

February 21, 2019

Housing Authority Board of Commissioners  
Clackamas County

Members of the Board:

Approval of Resolution No. 1936 for Housing Authority of Clackamas County  
to adopt the Local Contract Review Board rules

<b>Purpose/Outcomes</b>	Approval of Resolution No. 1936 for Housing Authority of Clackamas County to adopt the Local Contract Review Board rules
<b>Dollar Amount and Fiscal Impact</b>	No fiscal impact
<b>Funding Source(s)</b>	N/A
<b>Duration</b>	February 21, 2019 until amended
<b>Previous Board Action</b>	The Board approved the revised Housing Authority Procurement Policy on December 16, 2010
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Efficient and effective services</li> <li>2. Build public trust through good government</li> </ol>
<b>Contact Person</b>	Jill Smith, HACC Executive Director 503-742-5336
<b>Contract Number</b>	N/A

**BACKGROUND:**

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests approval to adopt the Local Contract Review Board (LCRB) rules for HACC procurements.

As a result of adopting the LCRB rules, HACC will follow its revised Procurement Handbook, which includes the County's Procurement Matrix to assist in determining the appropriate action to be taken for procurement of goods and services.

The Executive Director of the Housing Authority or designee is responsible for procurement and contract administration on behalf of the Housing Authority. Where contracts are required, the person initiating the contract will forward the proposed contract and supporting documentation to the Executive Director for review.

These changes are to bring HACC up to date with County Code and the procurement requirements of HUD.

Forms attached for reference include:

- HACC Board of Commissioners Resolution No. 1936
- HACC Procurement Handbook

The revised Procurement Handbook has been reviewed and approved by County Counsel. No County General Funds are involved.

**RECOMMENDATION:**

Staff recommends the Board approve Resolution No. 1936, for HACC to adopt the Local Contract Review Board Rules.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Swift". The signature is written in a cursive, flowing style.

Richard Swift, Director  
Health, Housing and Human Services

*Healthy Families. Strong Communities.*

2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

[www.clackamas.us](http://www.clackamas.us)

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF THE HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON**

In the Matter of a Resolution for  
the approval for Housing Authority  
of Clackamas County to adopt the  
Local Contract Review Board rules



Resolution No. 1936  
Page 1 of 1

**Whereas**, the Board of Commissioners for the Housing Authority of Clackamas County (the "Board") reviewed a request by the Housing Authority of Clackamas County ("HACC") to formally adopt the Clackamas County Local Contract Review Board ("LCRB") Rules for purposes of the HACC's public contracting under the Oregon Public Contract Code, ORS 279A.010 *et. seq.*, and, consistent with the LCRB's, to formally opt out of the Attorney General's Model Public Contracting Rules pursuant to ORS 279A.065; and

**Whereas**, the adoption of the LCRB's, and opt out of the Attorney General's Model Public Contracting Rules, is consistent with the HACC's revised Procurement Handbook;

**NOW THEREFORE, IT IS HEREBY ORDERED:**

1. The Board hereby adopts the Clackamas County Local Contract Review Board Rules, set forth in Appendix C of the Clackamas County Code, as well as any subsequent amendments that may be made thereto, for purposes of public contracting under the Oregon Public Contracting Code, ORS 279A.010 *et. seq.*; and
2. By adoption of the Clackamas County Local Contract Review Board Rules, the Board hereby opts out of the Attorney General's Model Public Contracting Rules pursuant to ORS 279A.065.
3. The Board hereby adopts the Clackamas County Procurement Code of Ethics, Administrative Rule Adopted by the Clackamas County Administrator, ARA-FIN-3.12. Provided, however, that any potential conflict of interest review or related process shall be submitted to the Housing Authority Executive Director for final determination.

Motion was made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**DATED** this 21 day of February, 2019

**BOARD OF COUNTY COMMISSIONERS OF THE  
HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



**HOUSING AUTHORITY OF CLACKAMAS COUNTY**

***PROCUREMENT HANDBOOK***

*Revised February 7, 2019*

# HOUSING AUTHORITY OF CLACKAMAS COUNTY

## PROCUREMENT HANDBOOK

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# HOUSING AUTHORITY OF CLACKAMAS COUNTY

## PROCUREMENT HANDBOOK

### SECTION I --- POLICY STATEMENT

- A. It is the intent of the Housing Authority that goods and services are procured efficiently, effectively, and in full compliance with applicable Federal standards, HUD regulations, and State and local laws.
- B. The Executive Director of the Housing Authority or designee is responsible for procurement and contract administration on behalf of the Housing Authority. Where contracts are required, the person initiating the contract will forward the proposed contract and supporting documentation to the Executive Director for review.
- C. All procurement activities and contracts will comply with the requirements of law. Applicable laws may include the following:
  - a. 2 CFR 200.317-326 - Procurement Standards;
  - b. 24 CFR Part 135 - Section 3 of HUD Act of 1992;
  - c. 24 CFR Part 964 – Tenant Participation & Opportunities in Public Housing;
  - d. ORS 279 – Oregon Public Contracting Code; and
  - e. Clackamas County Local Contract Review Board Rules (LCRBs), Appendix C of the Clackamas County Code.
- D. Unless inconsistent with federal law, the Housing Authority will conduct all public contracting, as that term is defined under ORS Chapter 279A, in accordance with the LCRBs. The Housing Authority shall be considered a “Contracting Agency” for purposes of following the LCRBs. Consistent with the LCRBs, the Housing Authority opted out of the Attorney General’s Model Public Contracting Rules pursuant to ORS 279A.065.
- E. The Housing Authority also intends to comply with current policies and rules of the Department of Housing and Urban Development (HUD), including HUD handbook 1344.1 Rev. 2 regarding federal labor standards and HUD handbook 7460.8 Rev. 2.
- F. In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

### SECTION II --- PROCUREMENT CLASSIFICATIONS

Levels of procurement and all procurement methods are established in the LCRBs. Use of supporting or illustrative documents, such as the Procurement Matrix, are encouraged. However, such documents, while helpful in summarizing the requirements of the LCRBs, should be used as a reference tool and not in lieu of the LCRBs themselves.

# HOUSING AUTHORITY OF CLACKAMAS COUNTY

## PROCUREMENT HANDBOOK

### A. **Public/Capital Improvements and Capital Fund Program (CFP) –**

Capital Improvements are projects for construction, reconstruction or major renovation on real property by or for the Housing Authority. Capital Improvements do not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement. CFP is for the development, financing, and modernization of public housing developments and for management improvements. Refer to Sections III through VI.

- B. **Exemption.** As set forth in ORS 456.122, no Oregon law with respect to the acquisition, operation or disposition of property by other public bodies applies to the Housing Authority, unless specifically provided.

## SECTION III --- PETTY CASH AND PURCHASING CARDS

- A. **Petty Cash Purchases** – Purchases under \$100 may be handled through the use of a petty cash account. Petty Cash Accounts may be established at each Housing Authority Office in an amount determined by the Executive Director to cover small purchases made during a month. For all Petty Cash Accounts, the Housing Authority shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be replenished and reconciled periodically. The total of the cash on hand, Petty cash slips and receipts will be kept in a lock box. The total of these 3 should always reconcile to the approved Petty Cash account balance.
- B. **Purchasing Cards** - Purchasing card usage shall follow the rules for all other small purchases and Clackamas County's Procurement Card Policy.

## SECTION IV --- PROCURING PERSONAL SERVICES

- A. The LCRBs control the procurement of personal service contracts, except to the extent in conflict with applicable federal law.
- B. When HUD funding is involved, personal services contracts will not have terms exceeding five years without HUD approval.
- C. Specific Considerations—Architectural/Engineering (A/E) Services
- The Housing Authority will not allow an A/E firm to prepare an application on a “no fee” basis, and then compensate that A/E firm by paying a contingent fee or contracting with them on a sole-source basis to do the design and construction phases.
  - There are several alternatives the Housing Authority may employ in contracting A/E services.



# HOUSING AUTHORITY OF CLACKAMAS COUNTY

## PROCUREMENT HANDBOOK

F. Housing Authority Procurement Code of Conduct. The Housing Authority hereby adopts and incorporates by reference the Clackamas County Procurement Code of Ethics, Administrative Rule Adopted by the County Administrator, ARA-FIN-3.12. Provided, however, that any potential Conflict of Interest review or related process shall be submitted to the Housing Authority Executive Director for final determination.

## SECTION VI --- FEDERAL PROCUREMENT AND CONTRACT STANDARDS

The following provisions of 2 CFR 200 are set forth for the purpose of describing current federal procurement and contract standards followed by the Housing Authority when federal funds are used. If the federal regulations are changed in a manner which conflicts with the provisions set forth below, then current federal regulations will prevail.

### **A. Prohibition against Contingent Fees when Federal Funds are Used**

When federal funds are used, Contractors wanting to do business with HACC must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

### **B. Responsible Contractors - 2 CFR 200.318(h)**

The Housing Authority will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

### **C. Suspension and Debarment**

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other Federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

### **D. Maintenance of Records**

The Housing Authority will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

### **E. Time and Materials Contracts**

The Housing Authority will use time and material type contracts only:

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- a. After a determination that no other contract is suitable, and
- b. If the contract includes a ceiling price that the contractor exceeds at its own risk.

### **F. 2 CFR 200.319(b) Geographic Preferences Prohibited**

The Housing Authority will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

### **G. 2 CFR 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms:**

The Housing Authority will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (e) of this section.

### **H. 2 CFR 200.323 – Contract cost and Price**

- (a) The Housing Authority will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, as defined by applicable federal regulations, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The Housing Authority will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is

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performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- (c) Costs or prices based on estimated costs for contracts under Federal awards are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under 2 CFR 200, Subpart E—Cost Principles. The Housing Authority will reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

## SECTION VII --- APPEALS AND REMEDIES

It is the Housing Authority's policy to resolve all contractual issues informally at the Housing Authority level, without litigation, whenever possible. When appropriate, the Housing Authority may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. When HUD funds are involved, disputes shall not be referred to HUD until all administrative remedies have been exhausted at the Housing Authority level. HUD will only review protests in cases of violations of federal law or regulations and failure of the Housing Authority to review a complaint or protest. Disclosure of information about any dispute involving HUD funds will be made to HUD.

## SECTION VIII --- DISPOSITION OF PERSONAL PROPERTY

The Housing Authority will follow the Clackamas County LCRBs for the Disposition of Personal Property.