



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

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July 22, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Metro Advance

Purpose/Outcomes	Approve execution of advance agreement with Metro Regional Government (“Metro”) in the amount of \$3,000,000, with the option to request an additional \$2,000,000.
Dollar Amount and Fiscal Impact	Initially \$3,000,000, with an optional additional \$2,000,000, to be repaid through the County’s disbursement of the supportive housing services (“SHS”) personal and business income taxes collected by Metro.
Funding Source	County’s share of the SHS income tax revenue.
Duration	June 30, 2023, or until paid in full
Previous Board Action	The Board has discussed SHS issues and distributions on numerous occasions.
Strategic Plan Alignment	1. <i>How does this item align with your department’s Strategic Business Plan goals?</i> Assists the County and the Housing Authority of Clackamas County in addressing houseless issues and providing sustainable and affordable housing 2. <i>How does this item align with the County’s Performance Clackamas goals?</i> Ensure safe, healthy, and secure communities
Counsel Review	<i>If item is a contract, including IGAs, leases, or other binding agreements, please put in the date of County Counsel Review and the initials of the attorney performing the review.)</i> 1. <i>Date of Counsel review:</i> 07/20/2021 <i>Initials of County Counsel performing review.</i> ARN
Procurement Review	1. <i>Was the item processed through Procurement?</i> Yes ___ No <u>x</u> .

	<i>2. If no, provide brief explanation. Exempt transaction (advancement of funds/IGA)</i>
Contact Person	Elizabeth Comfort and Andrew Naylor

Background:

On February 25, 2020, the Metro Council adopted Ordinance No. 20-1442, which imposed business and personal income taxes to fund SHS programs. At the same Metro Council meeting, the Metro Council adopted Resolution 20-5083, which referred Ordinance No. 20-1442 to voters within the Metro jurisdictional boundary for approval. The Multnomah County Elections Division designated Ordinance No. 20-1442 as Ballot Measure 26-210 (the “Measure”), and it was placed on the May 19, 2020, primary election ballot and approved.

The Measure provides that SHS income tax revenue collected by Metro will be distributed to Multnomah, Washington, and Clackamas County in the amounts set forth in the Measure.

The County believed that more revenue would have been received in the first year of the program. Unfortunately that did not occur. This left the County, and the Housing Authority of Clackamas County, which will administer many of the programs, without sufficient revenue to begin programming and administrative work.

In light of the County’s shortfalls, Metro agreed to advance an initial \$3,000,000 to Clackamas County to allow Clackamas County to begin to fund and provide supportive housing services consistent with Clackamas County’s Metro-approved Local Implementation Plan. Metro further agreed to advance, at Clackamas County’s discretion, an additional \$2,000,000, to be used consistent with the initial advancement.

Enclosed herewith is the negotiated agreement with Metro. The salient terms are as follows:

- The advance must be repaid by June 30, 2023;
- The initial advance will be \$3,000,000. County may, in its discretion, request an additional advance of \$2,000,000.
- The advance will be repaid from the County’s share of the income tax revenue collected by Metro;
- Interest will accrue on the then-current principal balance of the advance at the Local Government Investment Pool rate (currently .6% daily) (see <https://www.oregon.gov/treasury/public-financial-services/oregon-short-term-funds/Pages/default.aspx>);
- Funds may only be used consistent with the local implementation plan; and
- Metro’s sole remedy for default is withholding of future income tax revenue

Recommendation:

Staff requests this Board approve the Metro advance agreement.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "ANaylor", is positioned above the typed name.

Andrew Naylor
Assistant County Counsel, Senior

SUPPORTIVE HOUSING SERVICES ADVANCE AGREEMENT

This SUPPORTIVE HOUSING SERVICES ADVANCE AGREEMENT ("Agreement") is by and between Metro Regional Government, a municipal corporation of the state of Oregon ("Metro"); and Clackamas County, a political subdivision of the state of Oregon ("Clackamas"). Both parties to the Agreement are a "Party" and they are collectively referred to as the "Parties".

RECITALS

WHEREAS, on February 25, 2020, the Metro Council adopted Ordinance No. 20-1442, which imposed business and personal income taxes (the "Income Taxes") to fund a supportive housing services program based on its finding that areas within Metro's jurisdictional boundary (generally, the urbanized areas of Multnomah, Washington, and Clackamas counties) face a severe housing affordability and homelessness crisis that endangers the health and safety of thousands of Metro's unhoused neighbors; and

WHEREAS, also at the Metro Council meeting on February 25, 2020, the Metro Council adopted Resolution 20-5083, which referred Ordinance No. 20-1442 to voters within the Metro jurisdictional boundary for approval. The Multnomah County Elections Division designated Ordinance No. 20-1442 as Ballot Measure 26-210 (the "Measure"), and it was placed on the May 19, 2020, primary election ballot (within Metro's jurisdictional boundary); and

WHEREAS, On May 19, 2020, the Metro area voters approved the Measure, thereby approving Ordinance No. 20-1442; and

WHEREAS, the ballot title to the Measure "direct[ed] regional funding to local services agencies, require[d] community engagement to develop localized implementation plans[, and] ... [a]llocate[d] funds to counties by estimated revenue collected [from the Income Taxes] within each county ..."; and

WHEREAS, the Metro Council has approved Clackamas County's Local Implementation Plan; and

WHEREAS, although income tax collections will continue to increase throughout the year, current tax collection amounts are not available to fund program implementation at the beginning of the 2021-22 Fiscal Year; and

WHEREAS, the Parties have recently entered into a Short Term Revenue Sharing Agreement, allowing Metro to disburse already-collected SHS tax collections to Clackamas County; and

WHEREAS, and as more specifically set forth below, this Agreement sets forth the Parties' understanding that Metro will advance an initial \$3,000,000 to Clackamas County to allow Clackamas County to begin to fund and provide supportive housing services consistent with Clackamas County's Metro-approved Local Implementation Plan, with the option to advance an additional \$2,000,000 upon written request by Clackamas County; and

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. **Recitals Incorporated.** All of the foregoing Recitals are true and correct and are incorporated as part of the Agreement.
2. **Effective Date.** This Agreement becomes effective after approval by the Clackamas County Board of Commissioners and upon the signatures of authorized representatives of both Parties (the "Effective Date").
3. **Term.** The Agreement will run from the Effective Date until the earlier of June 30, 2023, or full repayment of the advance including any accrued interest, unless otherwise terminated by a Party as provided in Section 11 (the "Term").
4. **Disbursement of Advanced Funds.** Within seven business days from the Effective Date, Metro will advance Clackamas County \$3,000,000. Clackamas County may, in its administrative discretion, request up to an additional \$2,000,000. Upon receipt of the request, Metro will advance Clackamas County the requested additional sums within seven business days, in an amount not to exceed \$2,000,000. Any additional funds requested become part of the principal amount of the initial advance and are subject to the terms and conditions of this Agreement.
5. **Interest Rate.** Clackamas County recognizes that Metro is funding this advance through a Metro interfund loan. Therefore, interest will accrue monthly on the then-current principal balance of the advance, excluding previously-accrued interest, at the Local Government Investment Pool (LGIP) rate, which is the same rate that Metro will internally charge for the advance.
6. **Repayment of the Advance; Due Date.** Clackamas County will repay the advance through its allocated share of Supportive Housing Services income tax collections that Metro distributes to Clackamas County. The full amount of the advance, including all accrued interest, must be completely repaid no later than June 30, 2023. Prior to Metro disbursing SHS Income Tax revenue to Clackamas County, Clackamas County will notify Metro what amount, if any, of the next disbursement of SHS Income Tax revenue should be withheld for repayment of the advance. Upon receipt of that notice, Metro will withhold the requested amount and apply that amount against the remaining balance of the advance. Metro will apply the amount withheld first to accrued interest and then to the principal balance of the advance.
7. **Obligations of Clackamas County.** Clackamas County may only use the advanced funds received under this Agreement for supportive housing services and as consistent with the terms of Clackamas County's Metro-approved Local Implementation Plan. Clackamas County also agrees that its use of the advanced funds will be subject to the terms of its Supportive Housing Services IGA when it is executed by the Parties.
8. **Spending On Initial SHS Costs.** Anticipating receipt of SHS Income Taxes revenue, Clackamas County has incurred certain expenses and costs associated with providing supportive housing services and building administrative and staffing capacity to provide the supportive housing services consistent with Metro Code § 11.01.050 ("Initial Costs"). Clackamas County may use the funds from this advance to pay for Initial Costs.
9. **Prohibition on Budget Displacement.** The advanced funds received under this Agreement are not considered part of Clackamas County's existing supportive service program for purposes of the SHS

Measure's prohibition against displacement of funds currently provided towards supportive housing services.

10. **Nonrecourse Obligation.** This Agreement and the obligations contained herein are without recourse to Clackamas County. In the event of a breach of this Agreement, the sole remedy of Metro with respect to Clackamas County's obligations is to withhold Clackamas County's share of SHS tax collections until the advance and any accrued interest is repaid in full.

11. **Termination.** The Agreement may be terminated: (a) at any time by mutual written agreement of the Parties; (b) at any time after a Party has failed to cure a breach of the Agreement after receiving 30 days written notice from the non-breaching Party, or (c) upon full repayment of the advance including any accrued interest. Upon termination the full amount of the advance including any accrued interest becomes due immediately.

12. **Entire Agreement.** This Agreement contains the entire agreement between the Parties with regard to the matters set forth in it, and any prior negotiations and understandings between the Parties have been merged. This Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever, except by a writing signed by each Party, as provided in Section 17. The terms of this Agreement are contractual and not a mere recital.

13. **No Assignment; Successors; Third-Party Beneficiaries.** Neither Party may assign its interest in the Agreement to a third-party without the prior written consent of the other Party. The Agreement is binding upon and inures to the benefit of the Parties and their heirs, executors, representatives, successors, predecessors and assigns of each. This Agreement is enforceable only by each Party in its own right and is not enforceable by any person or entity. Nothing contained in this Agreement is intended to confer any rights, benefits, remedies, or entitlements upon any person or entity other than the Parties.

14. **Mutual Preparation.** This Agreement, in all respects, will be deemed and construed to have been prepared mutually and equally by all of the Parties. No uncertainty or ambiguity may be construed against either Party.

15. **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 is responsible for its own attorneys' fees and expenses.

16. **Dispute Resolution.**

- a. In the event a dispute arises between the Parties as to this Agreement or the alleged breach thereof, the Parties will first attempt to settle the issue through good faith negotiation.
- b. If the dispute cannot be settled amicably through negotiation within 30 days from the date on which either Party served written notice of the dispute on the other; the Parties will then attempt in good faith to settle the dispute by mediation. The Parties agree to attend at least four hours of mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. The Parties agree to schedule the mediation as soon as reasonably possible.
- c. The Parties will attempt to use the services of a mutually agreed upon mediator, with a preference for a mediator with experience in mediating local government disputes. If the

Parties cannot mutually agree on a mediator within 14 days of having submitted a possible mediator candidate, either Party may proceed to litigation.

- d. Each Party is responsible for its own mediation preparation costs and for payment of half of the mediator's services.

17. **General.** Each Party represents and warrants that it has the power and authority to enter into and perform the Agreement. No modifications or amendment of this Agreement are binding unless contained in a writing signed by the Party to be bound thereby and no waiver, promise or representation by a Party is binding unless contained in a signed writing. Except as otherwise provided above, the Agreement may only be amended or supplemented by a writing that: (a) is signed by a duly authorized representative of both Parties; (b) clearly recites the Parties' understanding and intent to amend the Agreement; and (c) clearly and with specificity describes the terms to be amended or supplemented. Any notice given pursuant to this Agreement must be in writing, and the notice is considered effective upon deposit in the U.S. mail, postage prepaid, if addressed to a Party at its address of record. If any part of this Agreement is deemed invalid, illegal, or unenforceable to any extent, that provision will be construed to be enforceable to the fullest extent possible, and the remainder of the Agreement will not be affected and will remain enforceable.

This Agreement may be executed in multiple counterparts and may be electronically signed. Any verified electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, admissibility, and enforceability. Any reproduction of the Agreement made by reliable means is considered an original.

Metro

Clackamas County

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Office of Metro Attorney Review:

Reviewed: CARRIE MACLAREN, ATTORNEY FOR METRO

Clackamas County Attorney Review:

Reviewed: STEPHEN MADKOUR, COUNTY ATTORNEY FOR CLACKAMAS COUNTY, OREGON

By: _____

Metro Attorney

Date: _____

By:  _____

County Attorney

Date: 7/20/21 _____