

April 3, 2025

BCC Agenda Date/Item: _____

Board of County Commissioners
 Clackamas County

Approval of an Intergovernmental Agreement with the City of Milwaukie for extended hours at the city library cooling shelter during heat events. Agreement Value is \$90,000 for 3 years. Funding is through Supportive Housing Services Measure Funds. No County General Funds are involved.

Previous Board Action/Review	City-Led Initiatives Funding Recommendations Policy Session, April 3, 2024.		
Performance Clackamas	1. This funding aligns with H3S’s Strategic Business Plan goal to increase self-sufficiency for our clients. 2. This funding aligns with the County’s Performance Clackamas goal to ensure safe, healthy, and secure communities.		
Counsel Review	Yes. Amanda Keller	Procurement Review	No
Contact Person	Vahid Brown, HCDD Deputy Director	Contact Phone	(971) 334-9870

EXECUTIVE SUMMARY: On behalf of the Housing and Community Development Division (HCDD), Health, Housing and Human Services requests approval of an Intergovernmental Agreement with the City of Milwaukie for operating a cooling center funded as part of the county’s city-led initiatives program.

In working to improve coordination and collaboration, increase geographical distribution of services, and support local leaders in tailoring approaches to addressing housing insecurity and homelessness that best suit their communities, Clackamas County released a Notice of Funding Opportunity (NOFO) in December 2023 for city-led homelessness initiatives. The NOFO was intended to spur creativity and innovation at the city level, empowering local leaders to supplement the often highly effective but under-resourced local efforts to meet the needs of very low-income households in their cities. Allowable initiative categories were very broad and included outreach and engagement, emergency shelter and navigation, housing services, health and wellness, advocacy, and employment and benefits. The Board approved staff funding recommendations in April 2024, including this proposal from the City of Milwaukie.

Funding will allow the City to extend its current operations of a cooling shelter at the City Library until 10 p.m. for up to 30 nights annually on days when the National Weather Service declares that the region will be under a Heat Advisory, Watch or Warning, or such other times and conditions as determined by the City. This program is intended to reduce incidences of heat injuries and heat-caused deaths in the community.

This Agreement is funded through Supportive Housing Services funds. No County General Funds are involved.

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RECOMMENDATION: Staff respectfully recommend that the Board of County Commissioners approve the Agreement (11912) and authorize Chair Roberts or his designee to sign on behalf of Clackamas County.

Respectfully submitted,

Mary Rumbaugh

Mary Rumbaugh
Director of Health, Housing and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CITY OF MILWAUKIE
#11912**

THIS AGREEMENT (this “Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and the City of Milwaukie (“Agency”), a unit of local government, collectively referred to as the “Parties” and each a “Party.”

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.

- A. In working to improve coordination and collaboration, increase geographical distribution of services, and support local leaders in tailoring approaches to addressing housing insecurity and homelessness that best suit their communities, Clackamas County released a Notice of Funding Opportunity for city-led homelessness initiatives.
- B. The funding opportunity is to spur creativity and innovation at the city level, empowering local leaders to supplement the often highly effective but under resourced local efforts to meet the needs of very low-income households.
- C. Proposed city-led initiatives were to have a clearly articulated connection to the needs of low- and extremely low-income households experiencing housing instability or homelessness and support Clackamas County’s recovery-oriented system of care.
- D. Clackamas County received more than \$30 million in requests submitted by eleven cities in dozens of distinct proposals.
- E. Proposals were reviewed for:
 - a. Clear alignment with County goals and priorities for its recovery-oriented homeless services system of care.
 - b. Being additive to the system, consistent with the requirement that Supportive Housing Services investments supplement, not supplant, existing investments.
 - c. Leveraging connection points to broader recovery-oriented system of care.
 - d. Having a duration not longer than three years, recognizing that the Notice of Funding Opportunity was for one-time and limited-term investments.
- F. On April 3, 2024, the Clackamas County Board of Commissioners approved of staff funding recommendations for proposals submitted in response to the Notice of Funding Opportunity for city-led homeless services initiatives.

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, and shall expire on June 30, 2027, unless otherwise extended by agreement of the Parties. Agency may seek reimbursement for

eligible expenses under this Agreement during the period between July 1, 2024 and June 30, 2027, subject to the additional terms and conditions set forth in this Agreement.

2. **Scope of Work.** Agency agrees to provide the services further described in Exhibit A (the “Program”), attached hereto and incorporated by this reference herein. The Program will be provided solely within Metro Regional Government (“Metro”) jurisdictional boundaries.
3. **Funding.** The maximum amount County may pay Agency is Ninety Thousand dollars (\$90,000) (the “Funds”). Funds will be distributed on a reimbursement basis in accordance with the budget set forth in Exhibit A. Agency shall use the funds awarded under this Agreement solely for reimbursement of eligible expenses incurred in performing the Program, as further set forth in Exhibit A.

Budget line items within categories may be changed with written agreement by both parties. County may approve, in writing, adjustments to budget line-item amounts provided the maximum Agreement amount is not exceeded.

4. **Payment.** Unless otherwise specified, the Agency shall submit monthly requests for reimbursement, on a form provided by County. A request for reimbursement must include a description of work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County’s review and approval of the requests for reimbursement submitted by Agency. Agency shall not submit requests for reimbursement for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. Agency’s failure to provide County information reasonably necessary for County to review a request for reimbursement for compliance with this Agreement may result in the County withholding payment, requiring Agency provide additional information, or treating this Agreement in default and pursuing any and all rights and remedies available to the County at law, in equity, or under this Agreement.

Invoices shall reference the above contract number and be submitted to: HCDD-AP@Clackamas.us

5. **Representations and Warranties.**

- A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency 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 Agency enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to Agency 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.

6. **Termination.**

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party. In the event a Party terminates this Agreement under this Section 6, Agency shall immediately return all unspent funds to the County.

- B. Either the County or the Agency may terminate this Agreement in the event of a default of the Agreement by the other, as defined below. 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 thirty (30) 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 thirty (30) day period, this provision shall be complied with if the breaching Party begins correction of the default within the thirty (30) 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. Upon termination for Agency's breach, County shall have all remedies available to it at law, in equity, or under this Agreement including, but not limited to, requiring Agency to return all unspent funds and to repay County for any funds used by Agency in violation of this Agreement.
- C. The County or the Agency 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. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance by County is prohibited.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. **Default.**

- A. **Agency's Default.** Agency will be in default under this Agreement upon the occurrence of the following:
 - i. Agency fails to use the Funds for eligible purposes described in Exhibit A;
 - ii. Any representation, warranty or statement made by Agency in this Agreement or in any documents or reports relied upon by County to measure the Program, the expenditure of the Funds, or the performance by Agency is untrue in any material respect when made;
 - iii. After thirty (30) days' written notice with an opportunity to cure, Agency fails to comply with any term or condition set forth in this Agreement;
 - iv. A petition, proceeding, or case is filed by or against Agency under federal or state bankruptcy, insolvency, receivership, or other law.
- B. **County's Default.** County will be in default under this Agreement if, after thirty (30) days' notice and opportunity to cure, County fails to perform a material obligation under this Agreement provided, however, that failure to disburse grant funds due to non-default termination, including lack of appropriation, shall not constitute a default of County.

8. **Remedies.**

- A. **County's Remedies.** In the event of Agency's default, County may, at its option, pursue any or all remedies available to it under this Agreement, at law, or in equity including, but not limited to: (1) withholding Agency additional Funds until compliance is met; (2) reclaiming Funds in the case of omissions or misrepresentations in financial or programmatic reporting; (3) requiring repayment of any Funds used by Agency in violation of this Agreement; (4) termination of this Agreement; (5) declaring Agency ineligible for receipt of future awards from County; or (6) initiation of an action or proceeding for damages, declaratory, or injunctive relief.
- B. **Agency's Remedies:** In the event County is in default, and whether or not Agency elects to terminate this Agreement, Agency's sole remedy for County's default, subject to the limits of applicable law or in this Agreement, is reimbursement for eligible costs incurred in accordance with this Agreement, less any claims County may have against Agency. In no event will County be liable to Agency for expenses related to termination of this Agreement or for any indirect, incidental, consequential or special damages.

9. **Indemnification.**

- A. **Indemnification and Defense of County.** Agency 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, the conduct of work, or from any act, omission, or neglect of Agency, its subcontractors, agents, or employees. The Agency agrees to indemnify, hold harmless and defend Clackamas County, and their 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 Agency or the Agency's employees, subcontractors, or agents.

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

- B. **Indemnification and Defense of Metro.** The Agency agrees to indemnify, defend, save and hold harmless Metro, and its officers, elected officials, agents and employees from and against all claims, actions, losses, liabilities, including reasonable attorney and accounting fees, and all expenses incidental to the investigation and defense thereof, arising out of or based upon Agency's acts or omissions in performing under this Agreement. However, neither Agency's nor any attorney engaged by Agency shall defend the claim in the name of Metro, nor purport to act as legal representative of Metro, without first receiving from the Metro attorney's office authority to act as legal counsel for Metro, nor shall Agency settle any claim on behalf of Metro without the approval of the Metro attorney's office. Metro may, at its election and expense, assume its own defense and settlement.

10. **Insurance.** 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. Both Parties agree to name the other as an additional insured under their self-insurance policies.
11. **Notices; Contacts.** Any notice provided under this Agreement shall be delivered by email or by first class US mail to the individuals identified below. Any communication or notice mailed by first class US mail shall be deemed to be given three days after the date it is sent. Any communication or notice sent by electronic mail is deemed to be received on the date sent, unless the sender receives an automated message or other indication that the email has not been delivered. Either Party may change the Party contact information, or the invoice or payment addresses, by giving prior written notice to the other Party.

Vahid Brown or their designee will act as liaison for the County.

Contact Information:

Housing and Community Development Division Administrator:
Vahid Brown
Email: vbrown@clackamas.us
Phone: (971) 334-9870

Copy to:
County Counsel
2051 Kaen Road, 4th Floor
Oregon City, OR 97045

City Manager's Office Grant Project Manager or their designee will act as liaison for the Agency.

Contact Information:

City of Milwaukie
Attn: City Manager
10501 SE Main Street
Milwaukie, OR 97222

12. **Monitoring.** Agency agrees to allow access to conduct financial and performance audits for the purpose of monitoring use of the Funds in accordance with Generally Accepted Auditing Standards ("GAAS"). County, and its duly authorized representatives, shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of Agency that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. Agency also agrees to provide reasonable access to Agency's employees for the purpose of monitoring. Audits may be performed onsite or offsite, at the County's discretion. If any audit or financial review finds that payments to Agency were in excess of the amount to which Agency was entitled, then Agency shall repay that amount to County. Agency agrees to allow County access to conduct site visits and inspections of financial records for the purpose of monitoring. Depending on the outcomes of the financial monitoring processes, this Agreement shall either (a) continue pursuant to the original terms, (b) continue pursuant to the original terms and any

additional conditions or remediation deemed appropriate by County, or (c) be de-obligated and terminated

13. **Reporting.** For food pantry services, reporting will include a summarization of the various data points identified in Exhibit A and demonstrating the need for food pantry services along with other visitation trends over time.

For the Behavioral Health Unit services, reporting will include summarization of collected data points to be shared with law enforcement management, as well as City Managers, identified in Exhibit A.

14. **Financial Management.** Agency shall comply with Generally Accepted Accounting Principles (GAAP) or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all uses of the Funds.

15. **Period of Availability.** Agency may charge to the award only allowable costs resulting from obligations incurred during the funding period.

16. **Closeout.** County will closeout this Agreement when County determines that all applicable administrative actions and all required work have been completed by Agency. Agency must liquidate all obligations incurred under this award and must submit all financial, performance, and other reports as required by County, no later than 90 calendar days after the end date of this Agreement.

17. **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 Agency 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. Agency, 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. **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.
- E. **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.
- F. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Program. 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.
- G. **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.
- H. **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.
- I. **No Third-Party Beneficiary.** Agency 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.** Agency 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 Agency 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 5, 7, 8, 9 and 17 (A), (C), (D), (E), (F), (G), (H), (I), (L), (O), and (Q) 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. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- O. **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.
- P. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County’s reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency 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.
- Q. **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.

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

Clackamas County

City of Milwaukie

Chair, Board of County Commissioners



Emma Sagor, City Manager

Date

2/18/25

Date

Approved as to Form:

Andrew Naylor
County Counsel

11/7/2024
Date

EXHIBIT A
Program
City of Milwaukie – City-Led Homelessness Initiatives Program Design

1. Library Cool Center Program:

Program Description

The City operates a cooling shelter at the City library. Funds provided under this Agreement will be used to permit City to extend its current cooling center hours to 10 p.m. up to 30 nights annually on days when the National Weather Service declares that the region will be under a Heat Advisory, Watch, or Warning, or such other times and conditions as determined by the City. The cooling center is currently operated by city staff who provide drinking water, shelf-stable snacks, sunscreen, and other cooling aides. Additional cooling supplies may also be purchased for City patrol officers to hand out directly to community members who are experiencing detrimental effects of heat.

The City’s cooling shelter is not an overnight or residential shelter – the cooling center will close no later than 10 p.m. on nights when it is operational.

Program Goals

This program is intended to reduce incidences of heat injuries and heat-caused deaths in the community. While temperatures do generally drop off once the sun sets, during prolonged heat events like the one from July 5-9, 2024, overnight temperatures may not drop below 80 degrees until after 9 p.m. By keeping the cooling center open into the late evening, the City can give its residents a safe place to cool down.

Data Collection & Reporting

The City will maintain a log of the number of visitors utilizing the cooling center during extended hours and will track how grant funds are spent in support of the shelter. Data logs must be provided to the Clackamas County Health, Housing, and Human Services Division annually by October 31.

Budget

Reimbursement is on an actual cost basis up to \$1,000 per night for staff time and expenditures when the City’s cooling shelter is in operation. The maximum amount County may pay City shall not to exceed \$30,000 per fiscal year, for a total amount not to exceed \$90,000 for the entire term of this Agreement.