

April 21, 2022

Housing Authority Board of Commissioners  
Clackamas County

Members of the Board:

Adoption of Resolution #1964 authorizing a Payment in Lieu of Taxes (PILOT) Agreement between Molalla Apartments Limited Partnership, the Housing Authority of Clackamas County (HACC) and Clackamas County, Housing Assistance Payment Contract (AHAP) and Related Matters, for the Molalla Apartments Project.  
Total Value is \$500,000.

Clackamas County General Funds are not involved.

<b>Purpose/Outcomes</b>	Adoption of Resolution #1964 authorizing a PILOT Agreement, AHAP and other related documents to support the affordability of the 60-unit affordable housing apartment project, commonly known as Molalla Apartments, in Molalla, Oregon
<b>Dollar Amount and Fiscal Impact</b>	Annual payments of \$25,000 paid to HACC by Molalla Apartments Limited Partnership and then distributed to Clackamas County for a term of 20 years.
<b>Funding Source(s)</b>	Molalla Apartments Limited Partnership
<b>Duration</b>	20 years from July 1, 2022, thru June 30, 2042.
<b>Previous Board Action/Review</b>	3/1/22 – PTE & PILOT concepts presented at Issues 4/19/22 – Resolution presented at Issues
<b>Strategic Plan Alignment</b>	This funding aligns with the County’s strategic priority to ensure safe, healthy, and secure communities by increasing the inventory of affordable housing units in Clackamas County.
<b>Counsel Review</b>	3/29/2022 - Andrew Naylor, County Counsel on behalf of the Housing Authority of Clackamas County 3/29/2022 – Kathleen Rastetter, County Counsel on behalf of Clackamas County
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide brief explanation: Tax exemption/real property transactions are outside the procurement code. Voucher award based on previous successful LIFT Funding Award
<b>Contact Person</b>	Devin Ellin, Director of Housing Development, HACC 971-227-0472

<b>Contract Number</b>	Housing Authority Resolution #1964
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**BACKGROUND:**

The state of Oregon is experiencing a housing crisis which has led to a shortage of affordable housing units in Clackamas County. Property tax exemptions are an effective affordable housing tool that can increase the amount of debt an affordable property can sustainably take on, thereby decreasing the demand for other limited funding sources. Property tax exemptions are especially useful to projects like Molalla Apartments that are being developed outside of the Urban Growth Boundary (UGB) where resources like the Regional Affordable Housing Bond are not available.

Affordable apartment communities owned by Oregon housing authorities receive a property tax exemption so long as the housing is rented to low-income households (ORS 307.092). This exemption exists even when a housing authority has an extremely limited role—e.g. a 0.01% ownership stake, no fiduciary responsibilities and no role in daily operations. Unlike other property tax exemptions, this exemption requires no local approval.

Since local governments do not receive their share of property taxes from exempt properties, local governments can enter into agreements with low-income housing developers to compensate them for a portion of their lost revenues. These agreements are known as "payment in lieu of taxes" (PILOT) agreements.

In support of Molalla Apartments, a 60-unit affordable housing project located in Molalla, the Housing Authority of Clackamas County—in partnership with Home First Development, LLC and Green Light, LLC—would become a Special Limited Partner in the Molalla Apartments Limited Partnership. If approved, the Partnership agrees to make a \$25,000 annual payment for the next 20 years to permit the Authority to make a payment in lieu of taxes to Clackamas County.

Each tax year during the term of the Agreement, beginning July 1, 2022, and ending June 30, 2042, on or before March 1 (commencing March 1, 2023, and March 1 of each year thereafter), the Partnership shall pay a fixed annual sum in the amount of \$25,000 to the Authority and the Authority will, in turn, promptly pay the PILOT Fee to the County to satisfy its obligation under the Agreement.

**ATTACHMENTS:**

- HACC Resolution #1964 – PILOT Agreement and AHAP – Molalla Apartments
- PILOT Agreement – Molalla Apartments – partnership executed
- Draft Molalla AHAP A & B

**RECOMMENDATION:**

Staff recommends the Board approve Resolution #1964 authorizing the Chair of the Housing Authority Board, Executive Director of the Authority, and the Director of Health, Housing and Human Services to act on behalf of the Housing Authority of Clackamas County to execute the PILOT Agreement and related documents, Admission of Authority as Special Limited Partner, and the Section 8 Project-Based Voucher Award through AHAP contract, for the Molalla Apartments Project.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rodney A. Cook".

Rodney A. Cook, Director  
Health, Housing and Human Services

## PAYMENT IN LIEU OF TAXES (PILOT) AGREEMENT

This Payment in Lieu of Taxes (PILOT) Agreement (the “**Agreement**”), is effective as of the date that the last party signs upon execution by all parties, is entered into by and among Molalla Apartments Limited Partnership, an Oregon limited partnership (the “**Partnership**”), the Housing Authority of Clackamas County, a public body corporate and politic (the “**Authority**”), and Clackamas County, Oregon, a municipal subdivision of the state of Oregon (the “**County**”).

### RECITALS

**A.** The Partnership was formed for the purpose of acquiring and owning real property located in Molalla, Oregon that is described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Property**”) and developing and operating thereon a 60-unit affordable housing apartment project commonly known as “Molalla Apartments” (the “**Project**”).

**B.** The Partnership will be operated pursuant to the terms and provisions of an Amended and Restated Agreement of Limited Partnership to be entered into among GL-HR Molalla 2021 GP LLC, an Oregon limited liability company, as General Partner, Wincopin Circle LLLP, a Maryland limited liability limited partnership, as Investor Limited Partner, and the Housing Authority of Clackamas County (“**HACC**”) as a Special Limited Partner (the “**Partnership Agreement**”). Evergreen Community Partners, an Oregon public benefit nonprofit corporation or its designee may also be admitted as a Special Limited Partner.

**C.** Pursuant to the provisions of ORS 307.092 and the fact that HACC has been admitted as a Special Limited Partner of the Partnership, the Property is exempt from all taxes to the extent authorized by ORS 307.092.

**D.** HACC has agreed to continue as a Special Limited Partner of the Partnership during the term of this Agreement.

**E.** Pursuant to ORS 307.092(2)(b), the Authority may enter into an agreement with the County to make an annual payment in lieu of paying taxes and the Authority desires to enter into such an agreement.

**F.** The Partnership has agreed to make a payment annually for twenty (20) years to the Authority to permit the Authority to make the payment in lieu of paying taxes to the County.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. Recitals.** The Recitals are incorporated herein as if fully set forth in this Agreement.
- 2. Term.** The term of this Agreement shall be for a period commencing as of the date of this Agreement and continuing until June 30, 2042, and shall relate to tax years beginning July 1, 2022, and continuing for a total of twenty (20) tax years ending June 30, 2042.

**3. PILOT Fee.** The fee in lieu of taxes (the “**PILOT Fee**”) shall be a fixed annual sum in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000).

**4. Payment of PILOT Fee.** Each tax year during the term of this Agreement, beginning July 1, 2022 and ending June 30, 2042, on or before March 1 (commencing March 1, 2023 and March 1 of each year thereafter), the Partnership shall pay an amount equal to the PILOT Fee to the Authority and the Authority will in turn promptly pay the PILOT Fee to the County to satisfy its obligation under this Agreement.

**5. Burden and Benefit; Assignment.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties and their respective successors, and assigns. No party may assign this Agreement without the prior written consent of the other parties which consent may be withheld in such party’s sole discretion.

**6. Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

**7. No Continuing Waiver.** The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

**8. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Oregon applicable to agreements made and to be performed entirely therein without regard to the conflict of law provisions of Oregon law.

**9. Headings.** All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

**10. Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

**11. Reliance.** Except with the written consent of all parties to this Agreement, no person other than the parties to this Agreement may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third-party beneficiary or otherwise.

**12. 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.

**13. Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties or any third party to create the relationship of partners or joint ventures between the County and the Partnership.

**14. Modification.** This Agreement may not be amended or modified in any respect whatsoever without written agreement of the parties.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth opposite the name of each party.

The Partnership has executed this Agreement \_\_\_\_\_ April 4 , 2022.


**PARTNERSHIP:**

**MOLALLA APARTMENTS LIMITED PARTNERSHIP,**  
an Oregon limited partnership


By: GL-HF Molalla 2021 GP LLC, an  
Oregon limited liability company,  
General Partner

By: Green Light – Home First LLC, an  
Oregon limited liability company,  
Manager

By: Home First Development, LLC,  
an Oregon limited liability company,  
Manager

By:   
\_\_\_\_\_  
Benjamin Pray  
Manager

By: Green Light LLC,  
an Oregon limited liability company,  
Manager

By:   
\_\_\_\_\_  
Mark N. R. Desbrow  
Managing Member

***[Remainder of page intentionally left blank]***

The Housing Authority has executed this Agreement \_\_\_\_\_, 2022.

**HOUSING AUTHORITY:**

**HOUSING AUTHORITY OF CLACKAMAS COUNTY,**  
a public body corporate and politic of Clackamas County, Oregon

By: \_\_\_\_\_

Name: Tootie Smith

Title: Chair of the Housing Authority of Clackamas County Board

The County has executed this Agreement \_\_\_\_\_, 2022.

**COUNTY:**

**CLACKAMAS COUNTY,**  
a municipal subdivision of the state of Oregon

By: \_\_\_\_\_

Name: Tootie Smith

Title: Chair of the Clackamas County Board of Commissioners

APPROVED AS TO FORM

APPROVED AS TO FORM

Kathleen Rastetter, Approved via email on 3/29/22

Andrew Naylor, Approved via email on 3/29/22

COUNSEL FOR CLACKAMAS COUNTY  
OF CLACKAMAS COUNTY, OREGON

COUNSEL FOR HOUSING AUTHORITY  
OF CLACKAMAS COUNTY, OREGON



## **EXHIBIT A**

### **Legal Description**

Part of the Rachel Larking Donation Land Claim No. 43 in Township 5 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the northeast corner of that tract of land conveyed to Harvey C. Burghardt, et ux, by Deed recorded in Deed Book 491, page 381, and running thence South 81°30' East along the south line of Market Road No. 32, 196 feet to a point; thence South 18°47' West 669.00 feet, more or less, to the south boundary of that tract of land conveyed to L.O. Nightingale, et ux, by Deed recorded in Deed Book 137, page 426; thence North 81°30' West along the south boundary of the Nightingale tract 196.00 feet, more or less, to the point of Intersection of said south boundary with the southerly extension of the easterly boundary line of the aforesaid Harvey C. Burghardt tract; thence Northerly along the southerly extension of the east boundary line of the said Burghardt tract 244.00 feet, more or less, to the southeast corner of said Burghardt tract; thence continuing Northerly along the east boundary line of the said Burghardt tract 425.00 feet to the point of beginning.

**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing**

**SECTION 8 PROJECT-BASED VOUCHER PROGRAM**

**AGREEMENT TO ENTER INTO A  
HOUSING ASSISTANCE PAYMENTS CONTRACT**

**NEW CONSTRUCTION OR REHABILITATION**

**PART I**

Public reporting burden for this collection of information is estimated to average 0.5 hours. This includes the time for collecting, reviewing and reporting the data. The information is being collected as required by 24 CFR 983.152, which requires the PHA to enter into an Agreement with the owner prior to execution of a HAP contract for PBV assistance as provided in §983.153. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

Privacy Act Statement. HUD is committed to protecting the privacy of individuals' information stored electronically or in paper form, in accordance with federal privacy laws, guidance, and best practices. HUD expects its third-party business partners, including Public Housing Authorities, who collect, use maintain, or disseminate HUD information to protect the privacy of that information in Accordance with applicable law.

**1.1 Parties**

This Agreement to Enter into Housing Assistance Payments Contract (“Agreement”) is between:

\_\_\_\_\_ (“PHA”) and  
\_\_\_\_\_ (“owner”).

**1.2 Purpose**

The owner agrees to develop the Housing Assistance Payments Contract (“HAP Contract”) units in accordance with Exhibit B and to comply with Housing Quality Standards (“HQS”), and the PHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP Contract with the owner of the Contract units.

### 1.3 Contents of Agreement

This Agreement consists of Part I, Part II, and the following Exhibits:

EXHIBIT A: The approved owner's PBV proposal. (Selection of proposals must be in accordance with 24 CFR 983.51.)

EXHIBIT B: Description of work to be performed under this Agreement, including:

- if the Agreement is for rehabilitation of units, this exhibit must include the rehabilitation work write-up and, where the PHA has determined necessary, specifications and plans.
- if the Agreement is for new construction of units, the work description must include the working drawings and specifications.
- any additional requirements beyond HQS relating to quality, design and architecture that the PHA requires.
- work items resulting from compliance with the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205, the accessibility requirements under section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR 8.22 and 8.23, and accessibility requirements under Titles II and III of the Americans with Disabilities Act at 28 CFR parts 35 and 36, as applicable.

EXHIBIT C: Description of housing, including:

- project site.
- total number of units in project covered by this Agreement.
- locations of contract units on site.
- number of contract units by area (size) and number of bedrooms and bathrooms.
- services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner.
- utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant.

- estimated initial rent to owner for the contract units.

EXHIBIT D: The HAP contract.

## 1.4 Significant Dates

- A. **Effective Date of the Agreement:** The Agreement must be executed promptly after PHA notice of proposal selection to the owner has been given. The PHA may not enter this Agreement with the owner until a subsidy layering review has been performed and an environmental review has been satisfactorily completed in accordance with HUD requirements.
- B. A project may either be a single-stage or multi-stage project. A single-stage project will have the same Agreement effective date for all contract units. A multi-stage project will separate effective dates for each stage.

### \_\_\_\_\_ Single-stage project

- i. Effective Date for all contract units: \_\_\_\_\_
- ii. Date of Commencement of the Work: The date for commencement of work is not later than \_\_\_\_\_ calendar days after the effective date of this Agreement.
- iii. Time for Completion of Work: The date for completion of the work is not later than \_\_\_\_\_ calendar days after the effective date of this Agreement.

### \_\_\_\_\_ Multi-Stage Project

Enter the information for each stage upon execution of the Agreement for the corresponding stage.

STAGE	NUMBER OF UNITS	EFFECTIVE DATE	DATE OF COMMENCEMENT OF WORK	TIME FOR COMPLETION OF WORK


**1.5 Nature of the Work**

- \_\_\_\_\_ This Agreement is for **New Construction** of units to be assisted by the project-based Voucher program.
- \_\_\_\_\_ This Agreement is for **Rehabilitation** of units to be assisted by the project-based Voucher program.

**1.6 Schedule of Completion**

- A. **Timely Performance of Work:** The owner agrees to begin work no later than the date for commencement of work as stated in Section 1.4. In the event the work is not commenced, diligently continued and completed as required under this Agreement, the PHA may terminate this Agreement or take other appropriate action. The owner agrees to report promptly to the PHA the date work is commenced and furnish the PHA with progress reports as required by the PHA.
- B. **Time for Completion:** All work must be completed no later than the end of the period stated in Section 1.4. Where completion in stages is provided for, work related to units included in each stage shall be completed by the stage completion date and all work on all stages must be completed no later than the end of the period stated in Section 1.4.
- C. **Delays:** If there is a delay in the completion due to unforeseen factors beyond the owner’s control as determined by the PHA, the PHA agrees to extend the time for completion for an appropriate period as determined by the PHA in accordance with HUD requirements.

**1.7 Changes in Work**

- A. The owner must obtain prior PHA approval for any change from the work specific in Exhibit B which would alter the design or quality of the rehabilitation or construction. The PHA is not required to approve any changes requested by the owner. PHA approval of any change may be conditioned on establishment of a lower initial rent to owner at the amounts determined by PHA.

- B. If the owner makes any changes in the work without prior PHA approval, the PHA may establish lower initial rents to owner at the amounts determined by PHA in accordance with HUD requirements.
- C. The PHA (or HUD in the case of insured or coinsured mortgages) may inspect the work during rehabilitation or construction to ensure that work is proceeding on schedule, is being accomplished in accordance with the terms of the Agreement, meets the level of material described in Exhibit B and meets typical levels of workmanship for the area.

## 1.8 Work completion

- A. Conformance with Exhibit B: The work must be completed in accordance with Exhibit B. The owner is solely responsible for completion of the work.
- B. Evidence of Completion: When the work is completed, the owner must provide the PHA with the following:
  1. A certification by the owner that the work has been completed in accordance with the HQS and all requirements of this Agreement.
  2. A certification by the owner that the owner has complied with labor standards and equal opportunity requirements in the development of the housing. (See 24 CFR 983.155(b)(1)(ii).)
  3. Additional Evidence of Completion: At the discretion of the PHA, or as required by HUD, this Agreement may specify additional documentation that must be submitted by owner as evidence of completion of the housing. Check the following that apply:
    - A certificate of occupancy or other evidence that the contract units comply with local requirements.
    - An architect's or developer's certification that the housing complies with:
      - the HQS;
      - State, local, or other building codes;
      - Zoning;
      - The rehabilitation work write-up for rehabilitated housing;

\_\_\_\_\_ The work description for newly constructed housing; or

\_\_\_\_\_ Any additional design or quality requirements pursuant to this Agreement.

## **1.9 Inspection and Acceptance by the PHA of Completed Contract Units**

- A. Completion of Contract Units: Upon receipt of owner notice of completion of Contract units, the PHA shall take the following steps:
  - 1. Review all evidence of completion submitted by owner.
  - 2. Inspect the units to determine if the housing has been completed in accordance with this Agreement, including compliance with the HQS and any additional requirements imposed by the PHA under this Agreement.
- B. Non-Acceptance: If the PHA determines the work has not been completed in accordance with this Agreement, including non-compliance with the HQS, the PHA shall promptly notify the owner of this decision and the reasons for the non-acceptance. The parties must not enter into the HAP contract.
- C. Acceptance: If the PHA determines housing has been completed in accordance with this Agreement, and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **1.10 Acceptance where defects or deficiencies are reported:**

- A. If other defects or deficiencies exist, the PHA shall determine whether and to what extent the defects or deficiencies are correctable, whether the units will be accepted after correction of defects or deficiencies, and the requirements and procedures for such correction and acceptance.
- B. Completion in Stages: Where completion in stages is provided for, the procedures of this paragraph shall apply to each stage.

## **1.11. Execution of HAP Contract**

- A. Time and Execution: Upon acceptance of the units by the PHA, the owner and the PHA execute the HAP contract.

- B. Completion in Stages: Where completion in stages is provided for the number and types of units in each stage, and the initial rents to owner for such units, shall be separately shown in Exhibit C of the contract for each stage. Upon acceptance of the first stage, the owner shall execute the contract and the signature block provided in the contract for that stage. Upon acceptance of each subsequent stage, the owner shall execute the signature block provided in the contract for such stage.
- C. Form of Contract: The terms of the contract shall be provided in Exhibit D of this Agreement. There shall be no change in the terms of the contract unless such change is approved by HUD headquarters. Prior to execution by the owner, all blank spaces in the contract shall be completed by the PHA.
- D. Survival of owner Obligations: Even after execution of the contract, the owner shall continue to be bound by all owner obligations under the Agreement.

### **1.12 Initial determination of rents**

- A. The estimated amount of initial rent to owner shall be established in Exhibit C of this Agreement.
- B. The initial amount of rent to owner is established at the beginning of the HAP contract term.
- C. The estimated and initial contract rent for each units may in no event exceed the amount authorized in accordance with HUD regulations and requirements. Where the estimated initial rent to owner exceeds the amount authorized in accordance with HUD regulations, the PHA shall establish a lower initial rent tow owner, in accordance with HUD regulations and requirements.

### **1.13 Uniform Relocation Act**

- A. A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.
- B. The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Payment of relocation assistance must be paid in accordance with HUD requirements.



- C. The acquisition of real property for a project to be assisted under the program is subject to the URA and 49 CFR part 24, subpart B.
- D. The PHA must require the owner to comply with the URA and 49 CFR part 24.
- E. In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement between the owner and the PHA.

#### **1.14 Protection of In-Place Families**

- A. In order to minimize displacement of in-place families, if a unit to be placed under Contract is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA’s waiting list (if they are not already on the list) and, once their continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized unit in the project.
- B. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.
- C. The term “in-place family” means an eligible family residing in a proposed contract unit on the proposal selection date.
- D. Assistance to in-place families may only be provided in accordance with the program regulations and other HUD requirements.

#### **1.15 Termination of Agreement and Contract**

The Agreement or HAP contract may be terminated upon at least 30 days notice to the owner by the PHA or HUD if the PHA or HUD determines that the contract units were not eligible for selection in conformity with HUD requirements.

#### **1.16 Rights of HUD if PHA Defaults Under Agreement**

If HUD determines that the PHA has failed to comply with this Agreement, or has failed to take appropriate action to HUD’s satisfaction or as directed by HUD, for enforcement of the PHA’s rights under this Agreement, HUD may assume the PHA’s rights and obligations under the Agreement, and may perform the obligations and enforce the rights of the PHA under the Agreement. HUD will, if it determines that the owner is not in default, pay Annual Contributions for the purpose of providing housing assistance payments with respect to the dwelling unit(s) under this Agreement for the duration of the HAP contract.

## 1.17 Owner Default and PHA Remedies

### A. Owner Default

Any of the following is a default by the owner under the Agreement:

1. The owner has failed to comply with any obligation under the Agreement.
2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
3. The owner has committed any fraud or made any false statement to the PHA or HUD in connection with the Agreement.
4. The owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing assistance program.
5. If the property where the contract units are located is subject to a lien or security interest securing a HUD loan or mortgage insured by HUD and:
  - a. The owner has failed to comply with the regulations for the applicable HUD loan or mortgage insurance program, with the mortgage or mortgage note, or with the regulatory agreement; or
  - b. The owner has committed fraud, bribery, or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
6. The owner has engaged in any drug-related criminal activity or any violent criminal activity.

### B. PHA Remedies

1. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights or remedies under the Agreement.
2. The PHA must notify the owner in writing of such determination. The notice by the PHA to the owner may require the owner to take corrective action (as verified by the PHA) by a time prescribed in the notice.

3. The PHA's rights and remedies under the Agreement include, but are not limited to: (i) terminating the Agreement; and (ii) declining to execute the HAP contract for some or all of the units.

C. PHA Remedy is not Waived

The PHA's exercise or non-exercise of any remedy for owner breach of the Agreement is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

## 1.18 PHA and Owner Relation to Third Parties

A. Selection and Performance of Contractor

1. The PHA has not assumed any responsibility or liability to the owner, or any other party for performance of any contractor, subcontractor or supplier, whether or not listed by the PHA as a qualified contractor or supplier under the program. The selection of a contractor, subcontractor or supplier is the sole responsibility of the owner and the PHA is not involved in any relationship between the owner and any contractor, subcontractor or supplier.
2. The owner must select a competent contractor to undertake rehabilitation or construction. The owner agrees to require from each prospective contractor a certification that neither the contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in contract by the Comptroller General or any federal Department or agency. The owner agrees not to award contracts to, otherwise engage in the service of, or fund any contractor that does not provide this certification.

B. Injury Resulting from Work under the Agreement: The PHA has not assumed any responsibility for or liability to any person, including a worker or a resident of the unit undergoing work pursuant to this Agreement, injured as a result of the work or as a result of any other action or failure to act by the owner, or any contractor, subcontractor or supplier.

C. Legal Relationship: The owner is not the agent of the PHA and this Agreement does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractor or subcontractors used by the owner in the implementation of the Agreement.

D. Exclusion of Third Party Claims: Nothing in this Agreement shall be construed as creating any right of any third party (other than HUD) to

enforce any provision of this Agreement or the Contract, or to assert any claim against HUD, the PHA or the owner under the Agreement or the Contract.

- E. Exclusion of owner Claims against HUD: Nothing in this Agreement shall be construed as creating any right of the owner to assert any claim against HUD.

### **1.19 PHA-Owned Units**

Notwithstanding Section 1.18 of this Agreement, a PHA may own units assisted under the project-based voucher program, subject to the special requirements in 24 CFR 983.59 regarding PHA-owned units.

### **1.20 Conflict of Interest**

- A. Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials
  1. No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the housing choice voucher program or project-based voucher program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in the Agreement or HAP contract.
  2. HUD may waive this provision for good cause.

- B. Disclosure

The owner has disclosed to the PHA any interest that would be a violation of the Agreement or HAP contract. The owner must fully and promptly update such disclosures.

### **1.21 Interest of Member or Delegate to Congress**

No member of or delegate to the Congress of the United States of America or resident-commissioner shall be admitted to any share or part of the Agreement or HAP contract or to any benefits arising from the Agreement of HAP contract.

## **1.22 Transfer of the Agreement, HAP Contract, or Property**

### **A. PHA Consent to Transfer**

The owner agrees that the owner has not made and will not make any transfer in any form, including any sale or assignment, of the Agreement, HAP contract, or the property without the prior written consent of the PHA. A change in ownership in the owner, such as a stock transfer or transfer of the interest of a limited partner, is not subject to the provisions of this section. Transfer of the interest of a general partner is subject to the provisions of this section.

### **B. Procedure for PHA Acceptance of Transferee**

Where the owner requests the consent of the PHA for a transfer in any form, including any sale or assignment, of the Agreement, the HAP contract, or the property, the PHA must consent to a transfer of the Agreement or HAP contract if the transferee agrees in writing (in a form acceptable to the PHA) to comply with all the terms of the Agreement and HAP contract, and if the transferee is acceptable to the PHA. The PHA's criteria for acceptance of the transferee must be in accordance with HUD requirements.

### **C. When Transfer is Prohibited**

The PHA will not consent to the transfer if any transferee, or any principal or interested party, is debarred, suspended, subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

## **1.23 Exclusion from Federal Programs**

### **A. Federal Requirements**

The owner must comply with and is subject to requirements of 2 CFR part 2424.

### **B. Disclosure**

The owner certifies that:

1. The owner has disclosed to the PHA the identity of the owner and any principal or interested party.

2. Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424.

## **1.24 Lobbying Certifications**

- A. The owner certifies, to the best of the owner's knowledge and belief, that:
  1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the Agreement or HAP contract, or the extension, continuation, renewal, amendment, or modification of the HAP contract.
  2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Agreement or HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

## **1.25 Subsidy Layering**

- A. Owner Disclosure

The owner must disclose to the PHA, in accordance with HUD requirements, information regarding any related assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or is expected to be made available with respect to the contract units. Such related assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

B. Limit of Payments

Housing assistance payments under the HAP contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of such related assistance. The PHA will adjust in accordance with HUD requirements the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

## 1.26 Prohibition of Discrimination

- A. The owner may not refuse to lease contract units to, or otherwise discriminate against, any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age, or familial status.
- B. The owner must comply with the following requirements:
1. The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.*;
  2. Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1959–1963 Comp., p. 652, and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107;
  3. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1;
  4. The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146;
  5. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title;
  6. Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*;
  7. 24 CFR part 8;
  8. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135;

9. Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60;
  10. Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprise Development); and
  11. Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393, and 3 CFR, 1987 Comp., p. 245) (Women’s Business Enterprise).
  12. HUD’s Equal Access Rule at 24 CFR 5.105. [OGC-Nonconcurrency: This section failed to reference protections with respect to actual or perceived sexual orientation, gender identity, or marital status in accordance with HUD’s Equal Access Rule at 24 CFR 5.105(a). Revising as indicated above is sufficient to resolve this concern.
- C. The PHA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and all related rules and regulations.

## **1.27 Owner Duty to Provide Information and Access to HUD and PHA**

- A. The owner must furnish any information pertinent to this Agreement as may be reasonably required from time to time by the PHA or HUD. The owner shall furnish such information in the form and manner required by the PHA or HUD.
- B. The owner must permit the PHA or HUD or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers, and records of the owner to the extent necessary to determine compliance with this Agreement.

## **1.28 Notices and Owner Certifications**

- A. Where the owner is required to give any notice to the PHA pursuant to this Agreement, such notice shall be in writing and shall be given in the manner designated by the PHA.



- B. Any certification or warranty by the owner pursuant to the Agreement shall be deemed a material representation of fact upon which reliance was placed when this transaction was entered into.

## 1.29 HUD Requirements

- A. The Agreement and the HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and will all HUD requirements, including amendments or changes in HUD requirements. The owner agrees to comply with all such laws and HUD requirements.
- B. HUD requirements are requirements that apply to the project-based voucher program. HUD requirements are issued by HUD Headquarters as regulations, *Federal Register* notices, or other binding program directives.

## 1.30 Applicability of Part II Provisions — Check All that Apply

- Training, Employment, and Contracting Opportunities  
Section 2.1 applies if the total of the contract rents for all units under the proposed HAP contract, over the maximum term of the contract, is more than \$200,000.
- Equal Employment Opportunity  
Section 2.2 applies only to construction contracts of more than \$10,000.
- Labor Standards Requirements  
Sections 2.4, 2.8, and 2.10 apply only when this Agreement covers nine or more units.
- Flood Insurance  
Section 2.11 applies if units are located in areas having special flood hazards and in which flood insurance is available under the National Flood Insurance Program.

**EXECUTION OF THE AGREEMENT**

<b>PUBLIC HOUSING AGENCY (PHA)</b> <b>Name of PHA (Print)</b>
By: Signature of authorized representative
Toni Karter, Interim Director, Housing Authority of Clackamas County
Name and official title (Print)
Date
<b>OWNER</b> <b>Name of Owner (Print)</b>
By: Signature of authorized representative
Name and official title (Print)
Date

**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing**

**SECTION 8 PROJECT-BASED VOUCHER PROGRAM**

**PBV AGREEMENT TO ENTER INTO  
HOUSING ASSISTANCE PAYMENTS CONTRACT**

**NEW CONSTRUCTION OR REHABILITATION**

**PART II**

This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

**2.1 Training, Employment and Contracting Opportunities**

- (a) The project assisted under this Agreement is subject to the requirements of section 3 of the Housing Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The owner shall carry out the provisions of section 3 and the regulations issued by HUD as set forth in 24 CFR part 135 and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement. This shall be a condition of the Federal financial assistance provided to the project, binding upon the owner, the owner's contractors and subcontractors, successors and assigns. Failure to fulfill these requirements shall subject the owner, the owner's contractors and subcontractors, successors and assigns to the sanctions specified by this Agreement, and to such sanctions as are specified by 24 CFR part 135.
- (b) The owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$100,000 the following clause:
- (1) The work to be performed under this contract is subject to the requirements of section 3 of the Housing Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- (2) The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- (3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, and shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (4) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- (5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- (6) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- (7) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 405e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible:
  - (i) preference and opportunities for training and employment shall be given to

Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprise. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

## **2.2 EQUAL EMPLOYMENT OPPORTUNITY**

- (a) The owner shall incorporate or cause to be incorporated into any contract in excess of \$10,000 for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is to be performed pursuant to this Agreement, the following nondiscrimination clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the labor union or workers representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and with the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imported and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.
- (b) The owner agrees to be bound by the above nondiscrimination clause with respect to his or her own employment practices when participating in federally assisted construction work.
- (c) The owner agrees to assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the nondiscrimination clause and the rules, regulations, and relevant orders of the Secretary of Labor, to furnish HUD and the Secretary of Labor such information

as they may require for the supervision of such compliance, and to otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.

- (d) The owner further agrees to refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the nondiscrimination clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to the Executive Order. In addition, if the owner fails or refuses to comply with these undertakings, HUD may take any or all of the following actions; cancel, terminate, or suspend in whole or in part this Agreement; refrain from extending any further assistance to the owner under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the owner, and refer the case to the Department of Justice for appropriate legal proceedings.

### **2.3 RESERVED**

### **2.4 HUD-FEDERAL LABOR STANDARDS PROVISIONS**

The owner is responsible for inserting the entire text of section 2.4 of this Agreement in all construction contracts and, if the owner performs any rehabilitation work on the project, the owner must comply with all provisions of section 2.4. (Note: Sections 2.4(b) and (c) apply only when the amount of the prime contract exceeds \$100,000.)

(a)(1)(i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made part hereof regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or

mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.



(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within the 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determinations or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractors under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such

violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due.

(3)(i) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4)(i) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary

employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeymen's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee

rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR part 3 which are incorporated by reference in this Agreement.

(6) Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in section 2.4(a)(1) through (11) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section 2.4(a).

(7) Contract Terminations; Debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U. S. Department of Labor, or the employees or their representatives.

(10)(i) Certification of Eligibility. By entering into this Agreement, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24.

(ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, section 1010, Title 18, U.S.C., "Federal Housing Administration transactions, provides in part: "Whoever, for the purpose of ...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Agreement to his employer.

(b) Contract Work Hours and Safety Standards Act. The provisions of this paragraph (b) are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for Unpaid Wages and Liquidated Damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontractors. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) Health and Safety. The provisions of this paragraph (c) are applicable only where the amount of the prime contract exceeds \$100,000.

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The contractor shall comply with all regulations issue by the Secretary of Labor pursuant to Title 29 part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 *et seq.*
- (3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and

Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**2.5-2.7 RESERVED**

**2.8 WAGE AND CLAIMS ADJUSTMENTS**

The owner shall be responsible for the correction of all violations under section 2.4, including violations committed by other contractors. In cases where there is evidence of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the owner or other contractor or a failure by the owner or other contractor to submit payrolls and related reports, the owner shall be required to place an amount in escrow, as determined by HUD sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked and the full amount of wages required under this Agreement, as well as an amount determined by HUD to be sufficient to satisfy any liability of the owner or other contractor for liquidated damages pursuant to section 2.4. The amounts withheld may be disbursed by HUD for and on account of the owner or other contractor to the respective employees to whom they are due, and to the Federal Government in satisfaction of liquidated damages under section 2.4.

**2.9 RESERVED**

**2.10 EVIDENCE OF UNIT(S) COMPLETION; ESCROW**

(a) The owner shall evidence the completion of the unit(s) by furnishing the PHA, in addition to the requirements listed in Part I of this Agreement, a certification of compliance with the provisions of sections 2.4 and 2.8 of this Agreement, and that to the best of the owner's knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of these provisions of the Agreement. In the event there are any such pending claims to the knowledge of the owner, the PHA, or HUD, the owner will place a sufficient amount in escrow, as directed by the PHA or HUD, to assure such payments.

(b) The escrows required under this section and section 2.8 of shall be paid to HUD, as escrowee, or to an escrowee designated by HUD, and the conditions and manner of releasing such escrows shall be designated and approved by HUD.



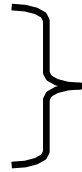
## **2.11 FLOOD INSURANCE**

If the project is located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Program, the owner agrees that: (1) the project will be covered, during the life of the property, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less; and (2) that it will advise any prospective purchaser or transferee of the property in writing of the continuing statutory requirement to maintain such flood insurance during the life of the property.

DRAFT

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

Resolution Authorizing the PILOT Agreement and Related Matters, for the Molalla Apartments Project



RESOLUTION #1964  
*Page 1 of 5*

WHEREAS, the Housing Authority of Clackamas County (“**Authority**”) works to provide affordable multifamily housing (“**Affordable Housing**”) for persons and families of lower income pursuant to Oregon Revised Statutes (“**ORS**”) 456.005 through 456.235; and

WHEREAS, GL-HR Molalla 2021 GP LLC, an Oregon limited liability company (the “**General Partner**”), has formed an Oregon limited partnership, Molalla Apartments Limited Partnership (the “**Partnership**”), of which the General Partner is the sole general partner, for the purposes of acquiring and developing Molalla Apartments, a 60-unit Affordable Housing project with a property address of 1000 W. Main Street, Molalla, Oregon (the “**Project**”); and

WHEREAS, the Partnership will be operated pursuant to the terms and provisions of an Amended and Restated Agreement of Limited Partnership, among General Partner, an entity designated by Enterprise Housing Credit Investments as Investor Limited Partner, Evergreen Community Partners, an Oregon public benefit nonprofit corporation as a Special Limited Partner, and the Housing Authority of Clackamas County, a public body and politic of the state of Oregon (the “**Authority**”), as a Special Limited Partner (the “**Partnership Agreement**”); and

WHEREAS, the Authority will be admitted as a Special Limited Partner to the Partnership pursuant to the Partnership Agreement with a 0.001% interest in the Partnership; and

WHEREAS, pursuant to ORS 307.092(2)(b), the Authority may enter into an agreement with the County to make an annual payment in lieu of paying taxes (“**PILOT Agreement**”) and the Authority desires to enter into such a PILOT Agreement with the County and the Partnership for the Project; and

WHEREAS, the Partnership has agreed to make a payment annually for twenty (20) years to the Authority to permit the Authority to make the payment in lieu of paying taxes to the County assuming the County and the Authority enter into the PILOT Agreement with the Partnership, and in the amount specified in the PILOT Agreement;

WHEREAS, the Partnership has requested the award of eight (8) Project Based Section 8 Vouchers in connection with the development of the Project; and

WHEREAS, the United States Department of Housing and Urban Development (HUD) requires the approval of the Authority in connection with their consideration and approval of any award of Project Based Section 8 Vouchers; and

WHEREAS, the Authority will apply to HUD for such approval; and

WHEREAS, subject to the approval of HUD, the Authority desires to award 8 Project Based Section 8 Vouchers to the Partnership to be awarded to the Project on its completion; and

WHEREAS, upon receipt of HUD approval, the Authority desires to enter into an Agreement to Enter Into A Housing Assistance Payment Contract (the "**AHAP Contract**") which will provide that upon timely completion of the Project the 8 Section 8 Project Vouchers will be awarded pursuant to the Section 8 Project-Based Voucher Program Housing Assistance Payment Contract (the "**HAP Contract**");

**NOW, THEREFORE, THE AUTHORITY ADOPTS THE FOLLOWING RESOLUTIONS:**

Section 1. Approve PILOT Agreement.

BE IT RESOLVED, that the Authority is authorized to negotiate, execute and deliver on behalf of the Authority the PILOT Agreement listed on the attached **Exhibit A** (whether bearing the name listed or names to similar effect) and such other documents as reasonably may be required in connection with the PILOT Agreement all in the form approved by any single Authorized Representative (such approval to be conclusively demonstrated by the signature of any single Authorized Representative on such documents).

Section 2. Approve Admission of Authority as Special Limited Partner.

BE IT RESOLVED, that the Authority is authorized to be admitted as a special limited partner into the Partnership and enter into the Partnership Agreement listed on

the attached **Exhibit A** (whether bearing the name listed or names to similar effect) and such other documents as reasonably may be required in connection with the Partnership Agreement all in the form approved by any single Authorized Representative (such approval to be conclusively demonstrated by the signature of any single Authorized Representative on such documents).

Section 3. Approve Award of 8 Project Based Vouchers.

BE IT RESOLVED, that, subject to HUD approval, the Authority is authorized to award eight (8) Section 8 Project Based Vouchers to the Partnership (the “**Project Based Vouchers**”); and

BE IT FURTHER RESOLVED, that the Authority is authorized to negotiate, execute and deliver on behalf of the Authority the AHAP Contract with the Partnership relating to the Project Based Vouchers listed on the attached **Exhibit A** (whether bearing the name listed or names to similar effect) and such other documents as reasonably may be required in connection with the award of the Project Based Vouchers all in the form approved by any single Authorized Representative (such approval to be conclusively demonstrated by the signature of any single Authorized Representative on such documents).

Section 4. Delegation.

BE IT RESOLVED, that the Chair of the Board of Commissioners for the Housing Authority of Clackamas County, Executive Director of the Authority, and the Director of Health, Housing and Human Services is each an Authorized Representative, as that term is used in these Resolutions, and each may individually, on behalf of the Authority, and without further action by the Board, finalize the terms of, execute, acknowledge, and deliver the actions and documents authorized herein.

Section 5. General Resolutions Authorizing and Ratifying Other Actions.

BE IT RESOLVED, that any Authorized Representative is authorized to negotiate, execute and deliver on behalf of the Authority such other agreements, certificates, and documents, and to take or authorize to be taken all such other actions any Authorized Representative shall deem necessary or desirable to carry out the agreements and transactions contemplated by the foregoing resolutions (such determination to be conclusively demonstrated by the signature of any single Authorized Representative on such document); and

BE IT FURTHER RESOLVED, that to the extent any action, agreement, document or certification has heretofore been taken, executed, delivered or performed by an Authorized Representative named in these Resolutions on behalf of the Authority to carry out the transactions contemplated by the foregoing resolutions, the same is hereby ratified and affirmed.

DATED THIS \_\_\_\_ DAY OF APRIL, 2022

	<p>BOARD OF COMMISSIONERS FOR THE HOUSING AUTHORITY OF CLACKAMAS COUNTY</p> <hr/> <p>Chair</p> <hr/> <p>Recording Secretary</p>
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APPROVED AS TO FORM

Andrew Naylor, Approved via email on 3/29/22  
COUNSEL FOR HOUSING AUTHORITY  
OF CLACKAMAS COUNTY, OREGON

## **EXHIBIT A**

### **PILOT Documents**

1. PILOT Agreement
2. Amended and Restated Limited Partnership Agreement

### **Project Based Voucher Documents**

1. Agreement to Enter into a Housing Assistance Payment Contract and any applicable Riders
2. Housing Assistance Payment Payments (HAP) Contract and any applicable Riders