

September 17, 2020

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval to execute an Intergovernmental Agreement between the Housing Authority of
Clackamas County and Community Development for Environmental Reviews

Purpose/Outcomes	Approval to execute an Intergovernmental Agreement between the Housing Authority of Clackamas County and Community Development for Environmental Reviews
Dollar Amount and Fiscal Impact	Not to exceed \$15,000.00
Funding Source(s)	HACC Development Funds
Duration	As needed, over three years 9/17/2020-9/16/2023
Previous Board Action	none
Strategic Plan Alignment	1. Sustainable and affordable housing 2. Ensure safe, healthy and secure communities
Counsel Review	Andrew Naylor, August 6, 2020
Procurement Review	N/A
Contact Person	Jill Smith, HACC Executive Director (503) 742-5336
Contract Number	Contract No. 9853

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests approval to enter into an Intergovernmental Agreement (IGA) with Clackamas County's Community Development division, for environmental reviews of future developments.

The County is acting as the Responsible Entity under 24 CFR Part 58 and is statutorily authorized to assume responsibility for environmental reviews, decision-making and action that would otherwise apply to HUD. This responsibility includes tribal consultation on historic properties and consultation with the State Historic Preservation Office (SHPO) of Oregon for compliance with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations 36 CFR Part 800.

RECOMMENDATION:

Staff recommends the Board approve the Intergovernmental Agreement with Clackamas County Community Development. Staff also recommends the Board authorize Jill Smith, HACC Executive Director, to sign the IGA on behalf of the Housing Authority Board of Commissioners, and Richard Swift to sign on behalf of the Clackamas County Board of County Commissioners.

Respectfully submitted,



Richard Swift, Director
Health, Housing and Human Services

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

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the Housing Authority of Clackamas County ("HACC"), an Oregon municipal corporation, 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.

The County, by and through its Community Development Division, and HACC intend to engage in a project (the "Project") to conduct environmental reviews and certify those reviews in accordance with the U. S. Department of Housing and Urban Development (HUD) environmental review requirements to comply with the National Environmental Policy Act (NEPA) for all public housing capital improvements and housing developments.

The County is acting as the Responsible Entity under 24 CFR Part 58 and is statutorily authorized to assume responsibility for environmental reviews, decision-making and action that would otherwise apply to HUD. This responsibility includes tribal consultation on historic properties and consultation with the State Historic Preservation Office (SHPO) of Oregon for compliance with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations 36 CFR Part 800.

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 upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2023, whichever is sooner.
2. **Scope of Work.** The parties agree to perform the services and other tasks identified in the Scope of Work attached hereto as Exhibit A.
3. **Consideration.** The HACC agrees to reimburse the County for hourly staff expenses toward the Project in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) over a three year period.
4. **Payment.** The County will submit quarterly invoices to the HACC for work performed to complete the Project. Invoices shall describe all work performed, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed.
5. **Representations and Warranties.**
 - A. *HACC Representations and Warranties:* HACC represents and warrants to County that HACC has the power and authority to enter into and perform this Agreement,

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and this Agreement, when executed and delivered, shall be a valid and binding obligation of HACC enforceable in accordance with its terms.

- B. *County Representations and Warranties*: County represents and warrants to HACC 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 HACC may terminate this Agreement for convenience upon thirty (30) days written notice to the other party. The County and HACC will work together to avoid terminating the Agreement to construct the Project, by bidding the Project, receiving and reviewing the bid amounts. If the County receives bids that are above the allocated budgeted funds, the County and HACC will jointly decide to not move forward with the Construction Project. The County will send out notice to Contractors that bids are all above the budgeted funds and the Project will be canceled.
- B. Either the County or the HACC may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the HACC shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either Party may terminate this Agreement in the event that Party fails to receive expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

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

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

8. **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.
9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
 - A. Mark Sirois or their designee will act as liaison for the County.

Contact Information:

Clackamas County Community Development Division
2051 Kaen Road, Suite 245
Oregon City, OR 97045

Stephen McMurtrey or their designee will act as liaison for the HACC.

Contact Information:

Housing Authority of Clackamas County
13930 S. Gain Street
Oregon City, OR 97045

10. General Provisions.

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- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and HACC that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. HACC, by execution of this Agreement, hereby consents to the in persona jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** HACC shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. HACC shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, HACC shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and/ or copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized

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body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **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.
- J. **No Third-Party Beneficiary.** HACC and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Subcontract and Assignment.** HACC shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole and absolute discretion. County's consent to any subcontract shall not relieve HACC of any of its duties or obligations under this Agreement.
- L. **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.
- M. **Survival.** All provisions in sections 7 and 10(A), (C), (D), (E), (F), (G), (H), (J), (M), and (Q) shall survive the termination of this Agreement, and all other rights and obligations which by their context are intended to survive.

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- N. **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.
- 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 HACC nor County shall be held responsible for delay or default caused by events outside of the HACC or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, both parties 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 their obligations under this Agreement.
- Q. **Confidentiality.** HACC acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by HACC or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). HACC agrees to hold Confidential Information in strict confidence, using at least the same degree of care that HACC uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

[Signatures on Following Page]

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

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Clackamas County

Chair, Jim Bernard
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Martha Schrader

Housing Authority of Clackamas County

Chair, Jim Bernard
Commissioner, Sonya Fischer
Commissioner, Ken Humberston
Commissioner, Paul Savas
Commissioner, Martha Schrader
Commissioner, Ann Leenstra

Richard Swift, Director
Health, Housing & Human Services
Department

Jill Smith, Director
Housing Authority of Clackamas County

Date

Date

County Counsel

Approved to Form

Date

Exhibit A

SCOPE OF WORK

HACC Responsibilities:

- A. Under this Agreement, the responsibilities of the HACC shall be as follows:
 - 1. HACC shall provide County with individual project descriptions, funding sources and proposed timeline to begin the environmental review process.
 - 2. HACC will secure any specialized services including but not limited to: noise assessments, archeological and architectural services as required by State Historic Preservation Offices (SHPO).
 - 3. HACC will be responsible for providing County with any site inspection reports.
 - 4. HACC will be responsible for reviewing the documentation provided by County to assure it meets HUD requirements for Public Housing Authority funded Projects.
 - 5. HACC agrees to not undertake any HUD or non-HUD funded Project activities until the required environmental reviews are completed.

County Responsibilities:

- A. Under this Agreement, the responsibilities of the County will be as follows:
 - 1. County shall request any needed project documentation from HACC.
 - 2. County will schedule and conduct environmental reviews of individual projects in the HUD Environmental Review Online System (HEROS) and complete the required documentation for HACC.
 - 3. County shall be responsible for tracking all hourly staff costs and billing HACC for all environmental review services provided at least quarterly.

Joint responsibilities:

County and HACC will jointly work on each project description to clarify roles and responsibilities of both HACC and County for each specific environmental review.

September 17, 2020

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

In the Matter of Writing off Uncollectible Accounts for the First Quarter of Fiscal Year 2021

Purpose/Outcomes	Approval to write off uncollectible rents, late charges and maintenance expenses for the first quarter of fiscal year 2021
Dollar Amount and Fiscal Impact	\$8,372.90 in total collection losses.
Funding Source	N/A
Duration	July 1, 2020 – September 30, 2020
Previous Board Action/Review	Fourth quarter collection losses were approved by the Housing Authority Board of Commissioners on June 18, 2020
Counsel Review	N/A
Strategic Plan Alignment	1. Efficient & effective services 2. Build Public Trust through good government
Contact Person	Jill Smith, Executive Director, Housing Authority 503-742-5336
Contract No.	N/A

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests the approval to write off uncollectible rents, late charges and maintenance expenses for the first quarter of fiscal year 2021 (July 1, 2020 – September 30, 2020). The uncollectible amounts are detailed on the attached worksheets.

Uncollectible amounts for the first quarter of fiscal year 2021 is \$7,810.08 for Low Rent Public Housing and \$562.82 for Local Project Fund. Of the total first quarter write offs, \$2,218.08 is for uncollected rents and \$6,154.82 is for maintenance repairs charged to tenants for repairs required to units before HACC could lease them to a new tenant. The total amount proposed for transfer from Accounts Receivable to Collection Loss for the first quarter of fiscal year 2021 is \$8,372.90.

As a business practice, HACC writes off debts after 90 days of collection efforts. Former residents in Public Housing that have debts that are written off continue to be tracked and are reported to a Federal database that prohibits their participation in any other Public Housing program nationally until such debt is paid.

RECOMMENDATION:

HACC recommends the approval to write off uncollectible rents, late charges and maintenance expenses and for the Executive Director to be authorized to approve the transfer of these accounts from Accounts Receivable to Collection Loss.

Respectfully submitted,

Richard Swift, Director

