

May 16, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
 Clackamas County

Approval of Motel/Hotel Services Contract with YKC Hospitality, LLC for 25 on-call hotel rooms for temporary housing. Contract value is \$1,247,500 for one year. Funding is through Metro Supportive Housing Services Measure funds. No County General Funds are involved.

Previous Board Action/Review	Agreement Briefed at issues- May 14, 2023		
Performance Clackamas	1. This programming aligns with H3S’s Strategic Business Plan goal to increase self-sufficiency for our clients. 2. This funding aligns with the County’s Performance Clackamas goal to ensure safe, healthy, and secure communities.		
Counsel Review	Yes	Procurement Review	No
Contact Person	Vahid Brown, HCDD Deputy Director	Contact Phone	(971) 334-9870

EXECUTIVE SUMMARY: On behalf of the Housing and Community Development Division (HCDD), Health, Housing & Human Services requests approval of Contract #11632 with YKC Hospitality, LLC. The contract is to provide 25 on-call hotel rooms. These rooms will serve multiple county purposes, including, but not limited to, temporary housing for homeless families and individuals, as well as housing to respond to the impacts of natural disasters, emergency events, or other situations wherein Clackamas County residents need temporary housing while partner agencies assist them in obtaining permanent housing, as needed.

Program participants sheltering in these rooms receive supportive services through The Father’s Heart Street Ministries. Services include but are not limited to, case management, individualized resource referral and connection, facilitating conflict resolution between hotel owners/management and program participants, and housing navigation assistance. Program participants are also connected to additional services and an ongoing rental subsidy to facilitate their placement into permanent supportive housing.

There is a continued need for these crucial services to support the County’s homeless services programming. The County had a previous Settlement and Release Agreement with YKC Hospitality, LLC and the County obtained a direct Contract under the temporary housing exemption in C-047-0288(7) of the Clackamas County Local Contract Review Board Rules. That contract expires on June 15, 2024. HCDD recently carried out a procurement for on-call hotel rooms in which YKC Hospitality, LLC was selected, and this new contract was written.

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This contract will cover the 15 days remaining in the current fiscal year from the previous contract expiration and the entirety of the 24/25 fiscal year.

Funding for this amendment is provided through Supportive Housing Services Funds. No General Funds are involved.

RECOMMENDATION: The Staff respectfully requests that the Board of County Commissioners approve this contract (11632) with YKC Hospitality, LLC, to provide on-call hotel rooms and authorize Chair Smith to sign on behalf of Clackamas County.

Respectfully submitted,

Rodney A. Cook

Rodney A. Cook
Director of Health, Housing & Human Services



**MOTEL/HOTEL SERVICES CONTRACT
H3S #11632**

This Motel/Hotel Services Contract (this “Contract”) is entered into between YKC Hospitality, LLC (“Contractor”), and Clackamas County, a political subdivisions of the State of Oregon (“County”) for the purposes of providing hotel rooms at the property described as Quality Inn and located at 9717 SE Sunnyside Rd., Clackamas, OR 97017 ("Premises"). The purpose of this Contract is to provide hotel rooms for multiple County purposes including, but not limited to, temporary housing for homeless families and individuals, as well as housing to respond to the impacts of natural disasters, emergency events, or other situations wherein Clackamas County residents need temporary housing while partner agencies assist them with obtaining permanent housing.

I. TERM

This Contract shall become effective June 16, 2024. Unless earlier terminated or extended, this Contract shall expire on June 30, 2025. The Contract may be extended, upon execution of a written amendment(s) by both parties, for up to three (3) one-year terms.

II. SCOPE OF WORK

Unless this Contract is otherwise terminated according to its terms, County will purchase, and Contractor shall provide, 25 hotel rooms on an on-call or as-needed basis for the one-year term of this Contract. Because the exact number of on-call rooms, if any, County need is unknown, nothing herein shall be construed as a promise by County to purchase all 25 on-call hotel rooms.

Contractor will provide the hotel rooms as further detailed in the Scope of Work attached and hereby incorporated by reference as Exhibit “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached incorporated by reference: This Contract and Exhibit A.

III. COMPENSATION

1. PAYMENT. County will pay Contractor on a \$125 per hotel room, per night basis.

Per Article IV, Section 10, damages to the Premises is limited to sixty thousand (\$60,000).

The total compensation authorized under this Contract, including all possible damages under Article IV, Section 10, shall not exceed **\$1,247,500**. Because the total compensation includes all potential costs, including on-call hotel rooms and potential damages authorized under Article IV, Section 10, nothing herein shall be construed as a promise to pay Contractor the entire \$1,247,500 authorized under this Contract.

2. TRAVEL EXPENSE REIMBURSEMENT. Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.

3. INVOICES. Contractor shall submit invoices for the hotel rooms, including any on-call hotel rooms purchased by County, on a monthly basis. Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase

order numbers. All charges shall be billed and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the Housing & Community Development Division via email to HCDD-AP@clackamas.us.

4. CONTRACTOR AND COUNTY CONTACTS.

Contractor Contract Administrator: Paul Choi Phone: Email: sangmin979@gmail.com	County Contract Administrator: Vahid Brown Phone: 971-334-9870 Email: vbrown@clackamas.us
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IV. CONTRACT PROVISIONS

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
7. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.**

- a. **Indemnification and defense of County.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon Contractor's acts or omissions in performing under this Contract.

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

8. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.

9. INSURANCE. Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Housing & Community Development Division, 2051 Kaen Road, Oregon City, OR 97045 or housingservices@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.

<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

10. LIMITATION OF LIABILITIES.

- a. Neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- b. Damage to Premises: Damage to the Premises arising from the acts of individuals staying in the rooms at County’s request (“Guest” or “Guests”) is limited to \$60,000 for the entire one-year term of this Contract. County will not be liable for any damage caused by Guests in excess of the \$60,000 provided herein. The reimbursement provided herein is Contractor’s sole remedy against County for the acts or omissions of Guests. County shall pay any verified amounts owed under this subsection within 30 days after written notice from Contractor to County, which obligation shall survive termination of this Agreement.
- c. No Agency. The parties expressly acknowledge and agree that the Guests are not agents, employees, contractors, or subcontractors of County, and that County has no control over the actions of Guests occupying the Premises.
- d. Prior Inspection. Prior to permitting Guests to occupy the Premises, a representative of both Contractor and County will perform a walkthrough of the Premises, including each room that may be occupied by a Guest, for purposes of documenting any preexisting real or personal property damage.
- e. Normal Wear and Tear Excluded. County is not responsible for normal wear and tear caused by Guests’ use of the Premises. The \$60,000 is only intended to cover any theft, removal of personal property or fixtures, or damages caused by Guests.

11. NOTICES. Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article II, Section 4. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County’s normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against

County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 12. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the customary standards in the industry or business most closely involved in providing similar goods or services; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 13. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Sections of Article IV: 1, 6, 7, 10, 12, 13, 14, 16, 19, 20, 21, 25, and 30, and all other terms and conditions which by their context are intended to survive termination of this Contract.
- 14. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 15. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 7, 8, 12, 15, and 20 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 16. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 17. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 18. TERMINATION.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties; (B) by either party for convenience upon thirty (30) days written notice to the non-terminating party, (C) on ten (10) day prior notice any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (D) if either party breaches any Contract provision or is declared insolvent, the non-breaching party may terminate after thirty (30) days written notice with an opportunity to cure; or (E) immediately by

either party if local, state, or federal laws are modified or interpreted in such a way that performance under this Contract is prohibited.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work.

- 19. REMEDIES.** If terminated by the County due to an uncured breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the rooms rented as of the month that the notice of termination was received by Contractor, at the rates set forth in the Contract, less any amounts previously paid and any right of setoff the County may have.
- 20. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract 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 Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. COMPLIANCE.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
 - a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material

EXHIBIT A SCOPE OF WORK

Service Provider: When County uses the hotel rooms to provide temporary housing to unhoused Guests as part of the County’s supportive housing service programs, County may use a third-party service provider (“Service Provider”). The Service Provider will serve as the coordinator. If used, the Service Provider will generally perform the following:

1. Service Provider will provide case management, including securing food, transportation, and other basic services.
2. Service Provider will provide at least weekly check-ins with homeless households residing in the hotel-based shelter.
3. Service Provider will provide interface with hotel owners during occupancy to resolve any misunderstandings or disagreements between Contractor and Guests.
4. Service Provider will accept referrals for hotel-based shelters from the Coordinated Housing Access system, and Clackamas County Emergency Operations Center (if applicable).
5. Service Provider will document and certify eligibility of each adult household member for hotel-based shelter services.

Minimum Services. In providing hotel rooms, regardless of specific purpose for which County is purchasing the rooms, Contractor agrees to provide, at a minimum, the following services:

- Provide hotel rooms in a manner and quality consistent with accordance with the same standards for hotels of similar size, location, and price;
- Regular communications with either the County or its selected Service Provider;
- Regularly provide fresh linens as needed;
- Daily retrieval of garbage;
- Laundry services on site for Guests to wash clothes;
- Regular room maintenance;
- 24/7 phone number for emergencies;
- All commercially reasonable services related to the provision of hotel rooms.

Additional terms and conditions:

Check in / Check out procedures: Service Provider will confirm check-ins and check-outs with the hotel management on a daily basis. Guests shall be required to execute a participant agreement on a form approved by the County prior to being checked in to the Premises.

No Tenancy: Clackamas County is renting these rooms to provide temporary housing. Guests may not establish residency in a shelter and Guests have no property interest in the Premises. The County’s program for use of the Premises is not transitional, rental, nor permanent housing, and no tenancy or other exclusive property interest in the Premises, or to any particular room, is established, intended, or expected. Contractor shall complete the attached Declaration of Persons-In-Charge of Property.

Guest issues: Contractor will communicate with County or, if a Service Provider is used, with the County’s Services Provider regarding any Guest issues. Contractor and either County or its Service Providers will work in good faith to resolve any issues and concerns.

Following general hotel rules: Guests will be required to follow hotel rules.

Meals/Cooking in the room: There will be no cooking in rooms other than in microwave ovens if those are provided in the rooms.

Guests/overnight visitors: Guests may not have any overnight guests.

Personal belongings in room: Contractor shall permit Guests to have 2 large bags of personal items in the hotel room. Guests may not have pets except for qualified service animals. Contractor may, in its sole discretion, allow Guests to have an emotional support animal, which Contractor will decide on a case-by-case basis.

Phones: Guests may not place any long distance calls from the hotel room phone. Guests may have personal phones.

Cleaning: Contractor will clean and maintain rooms no less than weekly. Any extra ordinary cleaning or damages identified will be reviewed with either County or its Service Provider, and is subject to the limitations of liability provisions set forth in Article IV, Section 10 of the Contract.

Transient Lodging Taxes: The parties do not anticipate transient lodging taxes with be assessed under applicable state or local law. In the event transient lodging taxes are assessed, County will be responsible for payment of the applicable state or local transient lodging tax assessed on rooms rented pursuant to this Contract.

DECLARATION OF PERSONS-IN-CHARGE OF PROPERTY
Relating to ORS 164.205 to 164.270 (Criminal Trespass)

DECLARATION: For purposes of ordering the removal or exclusion of persons from the real property commonly identified as the **Quality Inn** and located at **9717 SE Sunnyside Rd., Clackamas, OR 97017** ("Property"), and for purposes of enforcing criminal trespass and other laws on the Property, the undersigned, as duly authorized representative of the owner of fee title to the Property ("Owner"), does hereby declare that the following are PERSONS IN CHARGE as that term is defined in ORS 164.205(5) for a period of three months from the date of signature below:

1. Any peace officer and any reserve officer as defined by Oregon law.
2. Any director, officer, and manager of Owner; and any employee of Owner on-site at the Property.
3. Any Commissioner, Chair, and Director of Clackamas County ("County"); and any employee of County on-site at the Property.
4. Any director, officer, and manager of a County services contractor operating the Property on behalf of County ("Contractor"); and any employee of Contractor on-site at the Property.
5. Any person providing security services to, for, or in connection with the Property pursuant to a contract with anyone listed in Paragraphs 1-4 above.

IT IS SO DECLARED:

Owner: 

Name/Title: Paul Choi / Owner

Date: 4/22/2024