

June 5, 2025

BCC Agenda Date/Item: _____

Housing Authority Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with Clackamas County for the Payment in Lieu of Taxes distribution method to local tax districts applicable to the Molalla Apartments Limited Partnership. Agreement Value is \$425,000 for 17 years. Funding is through Payments in Lieu of Taxes by Molalla Apartments.

Previous Board Action/Review	Approved PILOT Agreement between HACC and Home First-Green Light Development, April 12, 2022, 20220421 II.A		
Performance Clackamas	This item aligns with the strategic priority to ensure safe, healthy, and secure communities by providing sustainable and affordable housing.		
Counsel Review	Yes, Sarah Foreman	Procurement Review	No
Contact Person	Devin Ellin	Contact Phone	971-227-0472

EXECUTIVE SUMMARY: The Housing Authority of Clackamas County (HACC), a component unit within the Housing and Community Development Division of the Health, Housing and Human Services Department, was approached by a developer of 60-unit affordable housing project located in Molalla to consider a property tax exemption request for the project. The Molalla Apartments Limited Partnership (the Partnership) was formed to acquire and own the housing apartment project.

Property tax exemptions can increase the amount of debt a project can sustain and decrease demand for other funding sources. HACC was admitted to the Partnership as a Special Limited Partner, exempting the property from paying property taxes. The Partnership agreed to make a \$25,000 fixed payment annually for 20 years, beginning July 1, 2022, and ending June 30, 2043, to permit the Authority to make the payment to the County in lieu of paying taxes to the County. HACC will continue as a Special Limited Partner of the Partnership during the term of the Payment in Lieu of Taxes (PILOT) agreement.

It is necessary to form an IGA between HACC and the County to determine the method of distribution of the PILOT funds beginning with the 2024-25 tax year. To date, the PILOT has been distributed using the uniform distribution schedule, which falls short of the goal of minimizing the impact of the exemption on the taxing districts within the tax code where the property is located.

The proposed IGA between HACC and the County prescribes the method of distribution of funds from the PILOT, which the County will make to the taxing districts within the tax code where the exempt property is located. The distribution will be made to the districts within the tax code based upon each district's percentage of the total rate, and no taxing district will receive more than they would have received if the property were taxable. Any excess funds after the initial distribution to the taxing districts within the tax code will be distributed according to the current tax year's uniform distribution schedule. Sarah Foreman from County Counsel and Lynn Longfellow from the Assessor's Office have reviewed this agreement.

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RECOMMENDATION: Staff respectfully recommends the Housing Authority Board approve the IGA with Clackamas County for a PILOT agreement for the Molalla Apartments and authorize Shannon Callahan, Executive Director of the Housing Authority, to sign on behalf of the Housing Authority.

Respectfully submitted,

Mary Rumbaugh

Mary Rumbaugh
Director of Health Housing and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND 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 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.

A. HACC 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 is a Special Limited Partner of Molalla Apartments Limited Partnership (**the “Partnership”**), formed 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”**);

B. The Partnership was formed for the purpose of acquiring and owning real property located in Molalla, Oregon (**the “Property”**) and developing and operating thereon a 60-unit affordable housing apartment project commonly known as “Molalla Apartments” (**the “Project”**).

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 for all taxes to the extent authorized by ORS 307.092.

D. 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.

E. The Partnership has agreed to make a fixed sum payment annually in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000) for twenty (20) years to the Authority to permit the Partnership to make the payment in lieu of paying taxes to the County. HACC has agreed to continue as a Special Limited Partner of the Partnership during the term of this agreement.

F. County calculates and collects annual property taxes for each of the taxing districts within the tax code area where the property is located and distributes the received tax money to the taxing districts.

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 on June 30, 2042 whichever is sooner.
2. **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).
3. **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.
4. **Disbursement of Funds.** Beginning in the 2024/2025 tax year, the annual PILOT Fee will be distributed to the taxing districts within the tax code area where the exempt property is located. If the PILOT Fee is equal to, more, or less than the taxes that would have been owed if the property were taxable, the distribution will be made to the districts within the tax code based upon each district’s percentage of the total rate and no taxing district will receive more that they would have received if taxable. Any excess funds after the initial distribution to the taxing districts within the tax code will be distributed according to the current tax year’s uniform distribution schedule.
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, 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 that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
6. **Termination.**
 - A. Either the County or HACC may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
 - B. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
7. **Indemnification.**

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

County Deputy Assessor or their designee will act as liaison for the County.

Contact Information:

Todd Cooper, Deputy Assessor
Clackamas County Assessment & Taxation
150 Beaver Creek Road, Room #135
Oregon City, OR 97045

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

HACC Finance Manager or their designee will act as liaison for HACC.

Contact Information:

Darren Chilton, Finance Manager
Housing Authority of Clackamas County
P.O. Box 1510
Oregon City, OR 97045-0510

9. **General Provisions.**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect

to the conflict of law provisions thereof. Any claim between County and 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 personam jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **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 copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the HACC shall promptly deliver these materials to the District's Project Manager.
- F. **Hazard Communication.** HACC shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to

the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, HACC shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- G. **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.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **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.
- J. **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.
- K. **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.
- L. **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.

- M. **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 discretion. County's consent to any subcontract shall not relieve HACC of any of its duties or obligations under this Agreement.
- N. **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.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **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.
- Q. **Time is of the Essence.** HACC agrees that time is of the essence in the performance this Agreement.
- R. **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.
- S. **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, HACC shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **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.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

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

Clackamas County

Housing Authority of Clackamas County

Chair, Board of County Commissioners

Shannon Callahan, Executive Director

Date

Date