

**MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF SAXMAN AND THE
KETCHIKAN GATEWAY BOROUGH
FOR
ADMINISTRATION OF THE LAST FRONTIER HOUSING INITIATIVE (LFH)
GRANT FROM STATE OF ALASKA, ALASKA HOUSING FINANCE
CORPORATION (AHFC)**

**LFH GRANT AGREEMENT NUMBER:
LFH-24-SAX-1**

THIS AGREEMENT is made and entered into this ____ day of _____, 2024, by and between THE CITY OF SAXMAN, ALASKA, a municipal corporation and a second class city, Route 2 Box 1, Ketchikan, Alaska 99901 (hereinafter referred to as “SAXMAN”), and THE KETCHIKAN GATEWAY BOROUGH (hereinafter referred to as “BOROUGH”), a general law municipality and a borough of the second class, 1900 First Avenue, Suite 210, Ketchikan, Alaska 99901 (hereinafter referred to as “Borough”). Collectively Saxman and Borough may be referred to as “Parties” or individually as “Party”.

RECITALS

WHEREAS, The Parties recognize a significant need for affordable housing in the City of Saxman and throughout the BOROUGH; and

WHEREAS, The State of Alaska, Alaska Housing Finance Corporation (AHFC) has made available grant funds which may be used by a governmental entity for construction of affordable housing projects; and

WHEREAS, The Parties acknowledge that either Party could pursue the grant, but that SAXMAN is better able to meet the timeline for the project; and

WHEREAS, The Parties agree that it is in the best interests of the residents of SAXMAN and the residents of the BOROUGH for SAXMAN and the BOROUGH to cooperate in the application for and administration of a grant from the AHFC for construction of affordable housing; and

WHEREAS, The City Council of the City of Saxman (hereinafter “Saxman”) has authorized submittal of an application to the AHFC for a AHFC Last Frontier Housing Initiative (LFH) grant for the purposes of constructing a minimum of eight (8) units of affordable housing; and

WHEREAS, the grant offers \$4.5 million in funding, requires a local match in the form of funds or services equal to 15% of total project costs up to \$675,000, and all funds received by SAXMAN under the agreement must be fully expended by September 30, 2025 or such later date as may be approved by AHFC; and

WHEREAS, the parties intend that SAXMAN will be responsible for up to \$275,000.00 of the local match in the form of land, administrative services, and SAXMAN funds, and the BOROUGH will be responsible for local match by in kind services and funds of up to \$400,000.00; and

WHEREAS, SAXMAN has the capacity to serve as the grant recipient, manage the construction project, and meet grant reporting and close-out requirements, and the BOROUGH has administrative capacity to assist SAXMAN in procurement, contracting, and in providing the funds and services necessary to meet the AHFC grant matching requirement;

WHEREAS, SAXMAN possesses municipal powers necessary to accept the grant and carry out the grant requirements, and BOROUGH will provide assistance hereunder in furtherance of its economic development powers to facilitate the construction project in an effort to increase the supply of adequate housing within the Borough; and

WHEREAS, Intergovernmental agreements between the Borough and Saxman for the joint and cooperative exercise of municipal powers are authorized by Article X, Section 13 of the Alaska Constitution; and

WHEREAS, SAXMAN and BOROUGH wish to coordinate and cooperate to ensure for the greater Ketchikan community the economic and housing benefits from the LFH initiative grant.

NOW THEREFORE, for and in consideration of the terms, covenants, and provisions contained here, the Borough and Saxman agree as follows:

I. INTRODUCTION

Saxman and BOROUGH mutually agree to the terms and conditions of this Memorandum of Agreement (MOA). Article X, Section 13 of the Alaska Constitution authorizes intergovernmental agreements for the joint and cooperative exercise of municipal powers.

Saxman has agreed to accept from Alaska Housing Finance Corporation (AHFC) an AHFC Last Frontier Housing Initiative (LFH) grant (GRANT). The GRANT offers eligibility for up to \$4.5 million in funding, requires the construction of a minimum of eight (8) units of affordable housing (the PROJECT), requires a match in the amount of 15% of total project costs up to \$675,000, and requires all funds be fully expended by September 30, 2025, or such date as the AHFC may authorize.

This MOA is being executed to facilitate the successful completion of the GRANT. BOROUGH's responsibility for this GRANT is limited to providing procurement and contracting assistance, and contributing services and funding toward satisfying a portion of the local match required under the GRANT. SAXMAN is solely responsible for all grant reporting and closeout requirements of the GRANT, providing the land necessary for development of the required housing units, and management of the PROJECT.

II. PROJECT SCOPE:

The PROJECT includes construction of at least eight residential units located on multiple parcels owned by SAXMAN. The parcels currently under consideration are:

1. Parcel Nos. 852140046060 and 85140086070, to be consolidated into one lot, on Eagle Avenue and described as lots 9 and 10 of Block 23 Saxman Indian Village Townsite as shown on the official plat of USS 1652A
2. Parcel No. 852140063000, at 2707 Bear Clan Street
3. Parcel No. 852140018070, on Killer Whale Avenue, described as lot 7 of Block 20 Saxman Subdivision as shown on the official plat of USS 1652A
4. Parcel Nos. 852140080800 and 852140080900, at the corner of Coho Road and Wolf Street, described as lots 11 and 12 of Block 24 Saxman Indian Village Townsite as shown on the official plat of USS 1652A
5. Lots 1 and 2 of Block 19 Saxman Indian Village as shown on the official plat of USS 1652A, located at the corner of Eagle and Frog

Final selection of parcels utilized in the PROJECT shall be made at the sole discretion of SAXMAN. Provision of property for the project is subject to the approval of the use or disposal in accordance with the requirements in the Saxman Municipal Code.

III. PLANNING, DESIGN, CONSTRUCTION, AND OWNERSHIP OF THE PROJECT AND IMPROVEMENTS

A. BOROUGH Responsibilities

BOROUGH shall:

1. Prepare and administer on behalf of SAXMAN all advertisements, RFPs and solicitation for bids, assisting with the initial drafting of contracts and awarding of contracts for all design and engineering services, construction management, grant administration services, site preparation work, utility installation, general contractor, subcontractor, and professional services as needed. BOROUGH will carry out these functions in accordance with BOROUGH Code of Ordinances. The services shall be tracked for matching fund reporting purposes at the fully loaded cost rate (salary and benefits) of the Borough employees performing the services or the actual contract cost of any contractors, as applicable. The BOROUGH shall keep SAXMAN apprised of the expenditure of the services provided on a monthly basis. The Saxman City Council authorized use of BOROUGH procurement procedures for the purposes of this PROJECT at its April 17, 2024 regular meeting.
2. Ensure all procurement procedures meet the requirements of any and all applicable state and federal regulations.
3. Review all bids and proposals for contractor qualifications and responsiveness, and keep SAXMAN informed of the status of all procurements. Contract award and execution shall be

conducted by the SAXMAN based on the successful bidder or proposer identified in the procurement process.

4. All contracts executed under this MOA will be the sole responsibility of SAXMAN, and BOROUGH shall have no privity of contract with contractors and no responsibility for requirements of contracts awarded by SAXMAN.
5. Provide funding, services, or other benefits of up to \$400,000 to SAXMAN in support of SAXMAN's requirement under the PROJECT to provide the required local match. BOROUGH will provide SAXMAN with an estimated value of support services as provided herein, and may provide additional direct financial support toward the match requirement as is mutually agreed between BOROUGH and SAXMAN.
6. Monitor PROJECT progress and advise SAXMAN of the timing and amount of draws and payments due under the awarded contracts.
7. Assist SAXMAN with the submittal of applications to the BOROUGH Planning Department as required by the PROJECT.

B. SAXMAN's Responsibilities

SAXMAN shall:

1. Keep BOROUGH point-of-contact involved with the PROJECT and cooperate to ensure PROJECT timelines are met.
2. Timely compile and submit all grant applications and reporting information to ensure compliance with AHFC grant requirements.
3. Plan, design, and construct the PROJECT. The PROJECT shall be in accordance with the following references, as applicable:
 - a. Requirements of executed AHFC grant (completed application and all exhibits thereto are attached here and marked as Exhibit A.)
 - b. All applicable environmental laws and regulations.
 - c. International Building Code
4. Ensure availability of funds necessary to pay invoices as they come due.

5. Ensure compliance with contract and AHFC requirements by all contractors.
6. Advise and consult with BOROUGH promptly on all construction or other change orders or project modifications affecting procurement processes.
7. Provide progress reports and invoicing to AHFC (monthly or other frequency as may be required) for grant reimbursement.
8. Prepare and submit grant reporting as required to AHFC.
9. Provide project management staff for coordination and review as needed, chargeable to the PROJECT.
10. Inspect the PROJECT prior to project closeout.
11. Manage PROJECT for twenty (20) years per the requirements of the grant agreement and related exhibits.
12. SAXMAN will determine "substantial completion" of each phase or stage of the PROJECT and accept full ownership and complete responsibility for each phase or stage of the PROJECT, and all improvements thereon, upon final completion of each. SAXMAN will continue to own and maintain the facility upon completion of the improvements. SAXMAN's acceptance of ownership is not a direct or implied waiver of a contractor's responsibility to satisfactorily complete the work. BOROUGH reserves the right at any time to inspect and review construction progress documents and participate in field inspections to ensure grant compliance.
13. Ensure annual completion of federally required Single Audits during the life of the project.
14. Execute and manage any professional services agreements as necessary.

IV. PROJECT ADMINISTRATION

- A.** BOROUGH and SAXMAN will consult and cooperate to ensure the use of GRANT funds is in compliance with all applicable guidance.
- B.** Except as otherwise expressly stated in this MOA, the BOROUGH shall be solely responsible for all project procurement up to the point of contract award. SAXMAN is solely responsible

for ensuring adequate funding is available in a timely manner to meet PROJECT and GRANT timelines.

- C. Except as otherwise expressly stated in this MOA, SAXMAN will be solely responsible for the management of all project contracts, in accordance with its contract(s) with the contractor(s) ("construction contract(s)").
- D. The BOROUGH shall include warranty provisions and all legal requirements such as prevailing wage, non-discrimination, and appropriate insurance requirements in any contracts for the project prepared by the BOROUGH as part of its work on the procurement process. SAXMAN shall include provisions addressing all legal requirements such as prevailing wage, non-discrimination, appropriate insurance requirements, and warranty provisions in the any construction contract(s) prepared by SAXMAN or third-party contractors acting directly under contract with SAXMAN, and is solely responsible for punch lists and acceptance of work as complete under the construction contract(s).

V. FINAL INSPECTION

Representatives of SAXMAN shall conduct final inspections of each phase or stage of the PROJECT's construction and determine when each such phase or stage of the PROJECT reaches the point of substantial completion. BOROUGH must be provided with reasonable advance notice of the time and location of any final inspection.

VI. TERM

This MOA shall become effective on the date of the last signature and shall apply through the completion of the PROJECT. The BOROUGH shall have no responsibility for management of the PROJECT after final completion.

VII. EACH PARTY IS AN INDEPENDENT CONTRACTOR

For the purposes of this Agreement and all services to be provided hereunder, each party shall be, and shall be deemed to be, an independent contractor and not a partner, agent, or employee of the other party. Neither party shall have authority to make any statements, representations, or commitments of any kind, or take any action, which shall be binding on the other party, except as may be explicitly provided for herein or authorized by the other party in writing.

VIII. SAXMAN RESPONSIBILITY FOR DISALLOWED COSTS AND REIMBURSEMENT

- A. SAXMAN shall be responsible for those costs not accepted for reimbursement by AHFC, and any other costs or expenses incurred under any contract relating to the PROJECT.
- B. In no event will BOROUGH be liable in any way for financial penalties or lost reimbursements due to failures in required grant reporting or compliance with grant requirements unless the breach is solely due to material breach by the BOROUGH.

IX. PENALTY FOR BREACH OF AGREEMENT OBLIGATIONS

- A. Notification and Opportunity to Cure: If either Party notifies the other Party in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement (Notice of Default), the Party receiving the Notice of Default shall have thirty (30) days from the date of such notification to remedy the violation; or, if the remedy will take in excess of thirty (30) days to complete, the Party shall have thirty (30) days to commence implementation of a satisfactory remedy.
Expiration of the thirty (30) days and failure by the Party to remedy is a breach of this MOA, and the Party that provided the Notice of Default may elect to terminate this MOA.
- B. Remedies: In the event of breach of the SAXMAN'S obligations to complete the constructed improvements, or to own, maintain and operate the PROJECT, SAXMAN shall be responsible for any reimbursement of the state and federal funds expended on the PROJECT under the AHFC GRANT required to be returned, and shall be responsible for reimbursement to BOROUGH for any funds expended by the BOROUGH in payments to SAXMAN or to third parties which are directly or indirectly related to fulfilling any of SAXMAN's contractual commitments including, but not limited to, the funds, but not in kind services, provided hereunder by BOROUGH toward satisfying SAXMAN's local match required under the GRANT.

X. MISCELLANEOUS PROVISIONS

- A. Amendment or modification of Agreement:

This MOA may only be modified or amended by written agreement signed by authorized representatives for both Parties.

B. Entire Agreement:

This MOA constitutes the entire agreement between the Parties. There are no other understandings or agreements between the Parties, either oral or memorialized in writing regarding the matters addressed in this MOA. This MOA may not be amended by the Parties unless an amendment is agreed to in writing, with both Parties signing through their authorized representatives.

C. Assignment:

Without the written consent of the parties, this MOA is not assignable by either party, either in whole or in part.

D. Third Parties and Responsibilities for Claims:

Nothing in this MOA shall be construed as conveying any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the Parties named in this MOA, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this MOA shall be construed as creating any legal relations between BOROUGH and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT.

E. Duty of Cooperation:

SAXMAN and BOROUGH agree to provide reasonable access to the PROJECT and to relevant PROJECT records, to any authorized representatives of the Parties, the State of Alaska, or U.S. Government. The Parties further agree to cooperate in good faith with inquiries and requests for information relating to the PROJECT or its obligations under this MOA.

F. Necessary Approvals:

In the event that any election, referendum, ordinance, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable SAXMAN to enter into this MOA or to undertake the PROJECT, or to observe, assume or carry out any of the provisions of the MOA, the SAXMAN will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

G. Joint Drafting:

This MOA has been jointly drafted by the Parties, and each party has had the ability and opportunity to consult with its legal counsel prior to signature. The MOA shall not be construed for or against either party.

H. Third Party Beneficiary Status:

The BOROUGH is not an intended beneficiary of any contracts between SAXMAN and any contractors, subcontractors, or consultants or any other third parties, and has no contractual rights with respect to such contracts or any provisions thereof, unless expressly stated otherwise.

XI. CONTACTS

The BOROUGH's contact is Amy Briggs, Procurement and Contracts Officer, (907) 228-6637. amyb@kgbak.us, or as may be re-designated in writing from time to time. SAXMAN's contact(s) are Marissa Medford, City Administrator, (907) 225-4166, cityadmin@kpunet.net, or as may be re-designated in writing from time to time.

The undersigned agree to the terms of this Memorandum of Agreement:

SAXMAN
Date

By: FRANK SELUDO
MAYOR, CITY OF SAXMAN

Attest:

BOROUGH
Date

By: RUBEN DURAN
BOROUGH MANAGER

Attest:

Approved as to form:

Glenn Brown, Borough Attorney

BOROUGH ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2024, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Ruben Duran** to me known to be the Borough Manager of the Ketchikan Gateway Borough, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that he signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

NOTARY PUBLIC FOR ALASKA
My Commission Expires:_____

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2024, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Kacie Paxton** to me known to be the Borough Clerk of the Ketchikan Gateway Borough, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that she was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that she signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

NOTARY PUBLIC FOR ALASKA
My Commission Expires:_____

CITY OF SAXMAN ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2024, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Frank Seludo** and **Marissa Medford** to me known to be the City Mayor and the Acting City Clerk of the City of Saxman, the entity which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

NOTARY PUBLIC FOR ALASKA

My Commission Expires: