

BUILDING EVALUATION SUPPORT AGREEMENT (FIXED TERM)

MASTER AGREEMENT PO-44000-00039380

This BUILDING EVALUATION SUPPORT AGREEMENT (FIXED TERM) ("**Agreement**") is entered into by and amongst the Joining Parties, as defined in Section I of this Agreement, in accordance with ORS 190.110 and 455.185.

I. PARTIES; NOTICES

The parties to this Agreement are (A) the Department of Consumer and Business Services, Building Codes Division ("DCBS"); and (B) each municipality providing building official services, plan review services, or inspection services pursuant to ORS Chapter 455 (and its related rules) that executes an undertaking in the form attached hereto as Exhibit 1 and delivers (by mail or email) such undertaking to the following (or such other address and email address as may be specified in writing by DCBS):

Building Codes Division
Department of Consumer and Business Services
Attn: Dawn Bass
P.O. Box 14470
Salem, OR 97309-0404
Email: Dawn.Bass@dcbs.oregon.gov

Each such executed and delivered undertaking (including the undertaking executed and delivered by DCBS) may be referred to herein as an "**Undertaking**". Those who become party to this Agreement (including DCBS) may be referred to herein individually as a "**Joining Party**" and collectively as the "**Joining Parties**". DCBS will maintain on its website, www.oregon.gov/bcd, a list of all Joining Parties, and DCBS will deliver and make available to all Joining Parties each Undertaking executed and delivered in accordance with this Agreement. The Undertaking executed and delivered by DCBS is attached hereto as Exhibit 2.

All notices to be given to any Joining Party under this Agreement shall be delivered in accordance with the information set forth on the Undertaking of such Joining Party.

II. PURPOSE

By this Agreement, the Joining Parties intend to provide building official services, plan review services, or inspection services to each other when requested and mutually agreed. For example, any municipality that is a Joining Party may request from and provide services to DCBS and any other municipality that is also a Joining Party.

III. TERM OF AGREEMENT

As to each Joining Party, this Agreement shall become effective on the date on which such Joining Party has executed and delivered its Undertaking in accordance with this Agreement. As to all

Joining Parties, this Agreement shall expire on June 30, 2034, unless earlier terminated in accordance with Section X of this Agreement.

IV. STATEMENT OF WORK

- A. When requesting or receiving services under this Agreement, a Joining Party is a **“Requesting Party”**. When providing or agreeing to provide requested services under this Agreement, a Joining Party is the **“Service Provider”**.
- B. A Requesting Party shall:
 - 1. When services are needed, contact the Building Official of the Service Provider from whom such services are requested;
 - 2. Electronically provide inspection requests to the Building Official of the Service Provider, at least twenty-four (24) hours in advance of any inspection;
 - 3. Send all construction plans for which plan review is requested to the address referenced in the Undertaking of the Service Provider; and
 - 4. Remit payment in accordance with Section V.
- C. If a Service Provider agrees to provide requested services to a Requesting Party, the Service Provider shall:
 - 1. Provide an interim Building Official who is certified to perform Building Official duties during business hours by telephone and onsite, as requested. The interim Building Official shall be an employee of the Service Provider, managed by, reporting within, and subject to the direction and control of the Service Provider;
 - 2. Perform plan review and inspection services, by plan or inspection as requested, consistent with construction codes and standards adopted by the State of Oregon;
 - 3. Perform services using Service Provider staff possessing appropriate certification or designation recognized by the State of Oregon;
 - 4. Complete residential plan reviews within ten (10) calendar days of receipt of complete plans, not including any time the plans are with the customer for correction. Complete commercial Plan reviews within fifteen (15) calendar days of receipt of complete plans, not including any time the plans are with the customer for correction; and
 - 5. Submit inspection reports to the Requesting Party within forty-eight (48) hours of the inspection.
- D. The only services that will be provided under this Agreement are those requested by the Requesting Party and as Service Provider has available staff to complete the requested work and has agreed to so provide.

V. CONSIDERATION

- A. Each Requesting Party agrees to pay each Service Provider according to one of the following options:
1. Percentage Option:
 - a. Ninety percent (90%) of the plan review fee collected by the Requesting Party for each plan review completed by the Service Provider.
 - b. Ninety percent (90%) of the permit fee collected by the Requesting Party for permitted work where the Service Provider will conduct all associated inspections with the permit.
 - c. Eighty-five dollars (\$85.00) per hour for any work performed by Service Provider that is not identified in (a) or (b).
 - d. For each month that Service Provider provides interim building official services, but no inspection services or plan review services, ten percent (10%) of all building code related fees collected by Requesting Party.
 2. Hourly Option: An hourly rate of eighty-five dollars (\$85.00) per hour for all work performed by the Service Provider.
- B. Each Joining Party certifies that, at the time such Joining Party executes and delivers its Undertaking in accordance with this Agreement, sufficient funds are available and authorized for expenditure to satisfy the financial obligations incurred by such Joining Party under this Agreement.
- C. Requesting Party shall remit payment to Service Provider on a quarterly basis. Quarters will be: January through March, April through June, July through September, and October through December. Payment is due within 60 days of the close of each quarter. Requesting Party shall deliver payment to the address specified in the Undertaking of the Service Provider.
- D. With each payment for work done under this Agreement, Requesting Party shall provide Service Provider with the following for each quarter for which payment is being remitted:
1. Documentation of each plan review performed by Service Provider and the associated fees collected by Requesting Party;
 2. Documentation of each permit inspected by Service Provider and the associated fees collected by Requesting Party;
 3. Documentation of any request for interim building official services made, as well as the month and number of hours Service Provider provided interim building official services;
 4. Documentation of all work performed by Service Provider at the hourly rate under paragraph A.1.c or A.2 of this section, as well as the date and number of hours such

work was performed; and

5. If interim building official services were provided, Requesting Party's accounting of all plan review fees and permit fees collected by Requesting Party, and all payment remitted to Service Provider, for the subject quarter.
- E. Each Requesting Party agrees that it shall provide or make available, if and as requested by a Service Provider, any and all records and information related to this Agreement of which the Requesting Party is custodian, within thirty (30) days of such request by the Service Provider.
- F. Each Joining Party agrees that it shall retain and not destroy any and all documents and records related to this Agreement for a minimum of one year after such document or record is created.

VI. TRAVEL AND OTHER EXPENSES

Requesting Party shall not be responsible to Service Provider for travel or other expenses.

VII. BREACH

No Joining Party shall be in breach of this Agreement until written notice of an unperformed obligation has been given and such obligation remains unperformed after notice for ten (10) days. In the event of a breach, a Joining Party not in breach (a "**Nonbreaching Party**") shall be entitled to seek damages or any other remedy provided by applicable law against the breaching Joining Party (a "**Breaching Party**").

VIII. THIRD PARTY CLAIMS; CONTRIBUTION

If any person who is not a Joining Party ("**Third Party**") makes any claim or brings any action, suit, or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("**Third Party Claim**") against a Joining Party (the "**Notified Party**") with respect to which any other Joining Party (each, an "**Other Party**") may have liability, the Notified Party must promptly notify each such Other Party in writing of the Third Party Claim and deliver to each such Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. The Notified Party and each Other Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by an Other Party of the notice and copies required in this paragraph and the meaningful opportunity for such Other Party to participate in the investigation, defense, and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to such Other Party's liability with respect to the Third Party Claim.

With respect to any Third Party Claim for which any Joining Party is jointly liable with any of the other Joining Parties (or would be if joined in the Third Party Claim), each such jointly liable Joining Party shall contribute to the amount of expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred and paid or payable by all such jointly liable Joining Parties in such proportion as is appropriate to reflect the relative fault of such jointly liable Joining Party in connection with the events which resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of each such jointly liable Joining Party shall be determined by reference to,

among other things, the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. In any instance, the contribution amount of each such jointly liable Joining Party is capped to the same extent as it would have been capped under Oregon law if such Joining Party had sole liability in the proceeding.

IX. AMENDMENTS

The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended except by written instrument signed by all Joining Parties. This Agreement may be extended upon written amendment.

X. TERMINATION

This Agreement may be terminated with respect to all Joining Parties by the written mutual assent of all Joining Parties. Any Joining Party may terminate its status as a party to this Agreement upon thirty (30) days' notice, in writing to DCBS.

XI. FORCE MAJEURE

No Joining Party shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, strikes, acts of God or the public enemy, unusually severe weather, legal acts of public authorities, or delays or defaults caused by public carriers, which cannot be reasonably foreseen or provided against. In such event, the period for the performance shall be extended for the period of such delay. Upon the cessation of the cause of delay or nonperformance, the affected Joining Party shall resume performance of its obligations under this Agreement. Any Joining Party may terminate its status as a party to this Agreement, effective with the giving of written notice, if it determines that such delays or failure will reasonably prevent successful performance in accordance with the terms of this Agreement.

XII. ALTERNATIVE DISPUTE RESOLUTION

The Joining Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of this Agreement. In addition, the Joining Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

XIII. NONDISCRIMINATION

The Joining Parties shall comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules, and regulations in the performance of this Agreement.

XIV. COMPLIANCE WITH APPLICABLE LAWS; GOVERNING LAW

The Joining Parties shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this Agreement. The parties agree that this Agreement shall be administered and construed under the laws of the State of Oregon.

XV. PARTNERSHIP

No Joining Party is, by virtue of this Agreement, a partner of or joint venturer with any other Joining Party in connection with activities carried out under this Agreement, and no Joining Party shall have any obligation with respect to any other Joining Party's debts or any other liability or obligation of any other Joining Party of whatever kind or nature.

XVI. AUDIT

DCBS reserves the right to audit all records of any other Joining Party that may be pertinent to this Agreement, and such other Joining Party shall bear the expense of any such audit.

XVII. NO WAIVER OF CLAIMS

The failure by any Joining Party to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision or provisions of this Agreement.

XVIII. ENTIRE AGREEMENT

This Agreement, including all Undertakings executed and delivered by the Joining Parties, constitutes the entire Agreement between the Joining Parties concerning the subject matter of this Agreement and supersedes any and all prior or contemporaneous negotiations or agreements between the Joining Parties, or any of them, whether written or oral, concerning the subject matter of this Agreement which is not fully expressed herein. This Agreement may not be modified or amended except by a writing signed by all Joining Parties.

JOINING PARTY SIGNATURES

See various Undertakings, each of which is incorporated into and made part of this Agreement.

EXHIBITS

Ex. 1: Form of Undertaking

Ex. 2: Executed DCBS Undertaking

EXHIBIT 1

BUILDING EVALUATION SUPPORT AGREEMENT

FORM OF UNDERTAKING

The undersigned City of Tualatin hereby:

1. Enters into and joins that certain BUILDING EVALUATION SUPPORT AGREEMENT (FIXED TERM), a copy of which is attached hereto as Exhibit A (the “Agreement”), as a Joining Party;
2. Represents that it has read and understands the Agreement and all terms and conditions thereof;
3. Agrees to comply with and be bound by the Agreement and all terms and conditions thereof; and
3. Reaffirms and restates all material assertions, representations, and warranties made by the Joining Parties in the Agreement.

CONTRACT ADMINISTRATOR

The undersigned’s Contract Administrator for the Agreement is:*

Name:	<u>Sherilyn Lombos</u>	Address:	<u>18880 SW Martinazzi Ave</u>
Title:	<u>City Manager</u>		<u>Tualatin, OR 97062</u>
Phone:	<u>(503) 691-3010</u>		<u></u>
Email:	<u>slombos@tualatin.gov</u>	FEIN:	<u></u>

NOTICES

All notices and deliveries (other than payment) to the undersigned under the Agreement should be directed to:*

Joining Party:	<u>City of Tualatin</u>
ATTN:	<u></u>
Address:	<u>10699 SW Herman Rd</u>
	<u>Tualatin, OR 97062</u>
Email:	<u>svandagriff@tualatin.gov</u>

PAYMENTS

All payments to the undersigned under the Agreement should be directed to:*

Joining Party: City of Tualatin
ATTN: _____
Address: 10699 SW Herman Rd
Tualatin, OR 97062
Email: ap@tualatin.gov

**Or as may be otherwise designated in writing and delivered to all Joining Parties.*

The undersigned understands and acknowledges that this undertaking shall not take effect unless and until this undertaking is executed and delivered in accordance with Section I of the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this undertaking and the Agreement as of the date set forth below.

JOINING PARTY:

City of Tualatin

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 2
BUILDING EVALUATION SUPPORT AGREEMENT
EXECUTED DCBS FORM OF UNDERTAKING

The undersigned, Department of Consumer and Business Services, Building Codes Division hereby:

1. Enters into and joins that certain BUILDING EVALUATION SUPPORT AGREEMENT (FIXED TERM), a copy of which is attached hereto as Exhibit A (the "Agreement"), as a Joining Party;
2. Represents that it has read and understands the Agreement and all terms and conditions thereof;
3. Agrees to comply with and be bound by the Agreement and all terms and conditions thereof; and
3. Reaffirms and restates all material assertions, representations, and warranties made by the Joining Parties in the Agreement.

CONTRACT ADMINISTRATOR

The undersigned's Contract Administrator for the Agreement is:*

Name: Michelle Usselman Address: PO Box 14470
Financial Operations
Title: Manager Salem, OR 97309-0404
Phone: 503-378-3755 Email: Michelle.M.Usselman@dcbs.oregon.gov

NOTICES

All notices and deliveries (other than payment) to the undersigned under the Agreement should be directed to:*

Joining Party: DCBS – Building Codes Division
ATTN: Statewide Services
Address: PO Box 14470
Salem, OR 97309-0404
Email: BCD.jurisdictionsupport@dcbs.oregon.gov

PAYMENTS

All payments to the undersigned under the Agreement should be directed to:*

Joining Party: DCBS – Building Codes Division
ATTN: Fiscal Services
Address: PO Box 14470
Salem, OR 97309-0404
Email: Fiscal.BCD@dcbs.oregon.gov

**Or as may be otherwise designated in writing and delivered to all Joining Parties.*

The undersigned understands and acknowledges that this undertaking shall not take effect unless and until this undertaking is executed and delivered in accordance with Section I of the Agreement.

IN WITNESS WHEREOF, the undersigned, Department of Consumer and Business Services, Building Codes Division has executed this undertaking and the Agreement as of the date set forth below.

DCBS:

State of Oregon, Department of Consumer and Business Services, Building Codes Division

Reviewed by:

Executed by:

Signature: 
Dawn Bass (Oct 2, 2024 11:55 PDT)
Name: Dawn Bass
Title: Deputy Administrator
Date: 10/02/2024

Signature: 
Name: Miriha Aglietti
Title: Designated Procurement Officer
Date: 10/03/2024

State of Oregon Approvals:

Approved Pursuant to ORS 279A.140
Department of Administrative Services

Approved Pursuant to ORS 291.047
Department of Justice

Signature: Not Required per OAR 125-247-0365(4)
Name: _____
Title: _____
Date: _____

Signature: Approved via email
Name: Jacob Gill
Title: Assistant Attorney General
Date: 09/09/2024