

RESOLUTION NO. 5581-21

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY RELATED TO THE COALITION OF COMMUNITIES OF COLOR RACIAL JUSTICE PROJECT.

WHEREAS, the City of Tualatin is an Oregon municipal corporation, organized under the laws of the State of Oregon;

WHEREAS, Clackamas County is a political subdivision of the State of Oregon;

WHEREAS, Clackamas County has entered into a contract with the Coalition of Communities of Color to perform a racial research justice project (the "Project");

WHEREAS, the City wishes to contribute funds toward the Project and benefit from the outcomes of the Project; and

WHEREAS, ORS 190.010 authorize the City and Clackamas County to enter into an intergovernmental agreement.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Manager is authorized to execute the intergovernmental agreement with Clackamas County, which is attached as Exhibit 1, and incorporated by reference.

Section 2. The City Manager is delegated the authority to make administrative amendments to manage and implement the IGA.

Section 3. This resolution is effective upon adoption.

Adopted by the City Council this 8th day of November, 2021.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder

EXHIBIT 1
RESOLUTION NO. 5581-21

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND THE CITY OF TUALATIN**

THIS AGREEMENT (this “Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and the City of Tualatin (“City”), a political subdivision of the State of Oregon, 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.

County has entered into a contract (the “Contract”) with the Coalition of Communities of Color (“CCC”) to perform a racial research justice project (the “Project”). The Project will involve a multi-year, three-phase process in partnership with the county, local community-based organizations, and jurisdictional agencies to implement a community-based participatory action research project into the lived realities of communities of color in Clackamas County, Oregon. The results of the Project will benefit not only the County itself, but also cities, rural areas, and unincorporated areas. The results of the Project will likely have impacts across many housing, health, transportation, civic, and employment systems within Oregon. Since the findings of the work of CCC extends beyond the County as an organization into a wider network of community, cities and organizations, including the City, have agreed to contribute funds to this work with Clackamas County. The County will provide quarterly updates on the status of the Project to each of the contributors and will be invited to meetings throughout the duration of the project. Each contributor will receive the final written report at the completion of the Project. Other than the payment of Funds, there are no other obligations or expectations of contributors for the Project.

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 January, 2023, whichever is later.
2. **Consideration.** During the first year of this Agreement, the City agrees to pay the County, from available and authorized funds, a sum not to exceed \$2,500.00 to support the Project (the “Funds”). The City shall tender payment of Funds within thirty (30) days of execution of this Agreement. County may only use the Funds to reimburse County for costs incurred under the Contract with CCC to complete the Project.

The City may, in its sole discretion, agree to pay the County additional Funds to support the Project during the Term of this Agreement. If the City decides to pay the County additional Funds to support the Project, the parties will execute a written

amendment to this Agreement, on terms acceptable to both parties, detailing the additional sums to be provided.

3. Representations and Warranties.

- A. *The City Representations and Warranties:* The City represents and warrants to County that the City 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 the City enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to the City 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.

4. Termination.

- A. **Termination for Convenience.** Either the County or the City may terminate this Agreement at any time prior to the City distributing funds to County. After the City has distributed funds to County, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party. In the event a party terminates this Agreement under this Section 4 A, County shall immediately return all unspent Funds, if any, to the City.
- B. **Termination for Breach.** Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other Party. 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. Upon termination for breach, the non-breaching Party shall have all remedies available to it at law, in equity, or under this Agreement.
- C. **Termination for Non-appropriation/Change in Law.** Either Party may terminate this Agreement in the event either Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to perform under this Agreement. Additionally, either Party may terminate this Agreement if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited. In the event of termination under this Subsection C, County shall immediately return all unspent Funds, if any, to the City.
- D. **Waiver.** The County or the City 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.

- E. **Reservation of Remedies.** The termination of this Agreement, regardless of cause, shall not prejudice any rights or obligations accrued to the Parties prior to termination. Each Party shall have all rights and remedies available to it at law, in equity, or under this Agreement.

5. **Indemnification**

- A. 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 City, 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 City 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 City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

- 6. **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.
- 7. **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 or other indication 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. Martine Coblentz or their designee will act as liaison for the County.

Contact Information:

2051 Kaen Rd #450, Oregon City OR 97045
MCoblentz@clackmas.us

503-655-8579

Sherilyn Lombos or their designee will act as liaison for the City.

Contact Information:

18880 SW Martinazzi Ave, Tualatin OR 97062

slombos@tualatin.gov

503-691-3010

8. 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 the City 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 either Party 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. The City, 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.** The Parties 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.
- 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 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.** The City 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.** No Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in that Party's sole discretion.
- 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 5 and 8 (A), (C), (D), (E), (F), (G), (H), (J), (M), (P), and (R) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- 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. **Time is of the Essence.** The City agrees that time is of the essence in the performance this Agreement.
- P. **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.
- Q. **Force Majeure.** Neither the City nor County shall be held responsible for delay or default caused by events outside of the City or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, the City 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.
- R. **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

City of Tualatin

Gary Schmidt, County Administrator

Sherilyn Lombos, City Manager

Date

Date