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INTERLOCAL AGREEMENT BETWEEN KITSAP COUNTY CONSOLIDATED HOUSING AUTHORITY AND CITY OF POULSBO REGARDING POULSBO NORDIC COTTAGES

THIS AGREEMENT is entered into on 1/25, 2022, between Kitsap County Consolidated Housing Authority ("KCCHA"), a public housing authority organized under Title 35 RCW and the City of Poulsbo ("the City"), an optional municipal code city organized under Title 35A RCW, in order to provide for the design and construction of Nordic Cottages ("the Project"), to be accomplished under the joint supervision of the City and KCCHA.

RECITALS

A. The City of Poulsbo has experienced significant growth in its population for the last several years, a trend that is expected to continue for the foreseeable future. Accompanying this growth is an increased demand for housing; and

B. In July 2021, the Poulsbo City Council unanimously approved a one-tenth of 1% increase in sales taxes to develop affordable housing the City; and

C. The Poulsbo City Council desires to partner with KCCHA to provide general project management services in connection with the Project; and

D. KCCHA has extensive experience in the organization and management of complex residential housing projects. KCCHA is legally authorized to assist as a project manager of construction projects undertaken by other governmental entities and is willing to provide such services to the City to facilitate the Project; and

E. The City of Poulsbo desires to utilize KCCHA's construction and project management experience. The City believes that the efficiency of construction of the Project will be enhanced by KCCHA's general contracting and project management expertise and that utilizing KCCHA's assistance will provide scheduling and cost-savings benefits.

F. In addition, the City and KCCHA believe that the efficiencies created by this joint operation will allow the City to provide enhanced governmental services to the residents of Poulsbo more efficiently and sooner due to the combined experience and efforts of these two entities; and

G. The parties therefore desire to enter into this interlocal agreement in order to provide for the joint oversight of the Project by the parties and for the ultimate transfer of operational control of the real property described in this agreement and the new Nordic Cottages to the City.

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AGREEMENT

FOR THE REASONS SET FORTH ABOVE, KCCHA AND THE CITY HEREBY AGREE AS FOLLOWS:

1. Purpose. The purpose of this Agreement is to provide the terms and conditions under which KCCHA will provide project management services to the City ("Project Manager") for the design and construction of the Nordic Cottage Project. As referred to in this Agreement, the Nordic Cottages are to consist of three to five two level cottages sited at the Triangle Property (609 NE Lincoln Road, Poulsbo, Washington). The Project is to consist of new housing facilities, together with associated site improvements, including off-site parking spaces, associated landscaping, utilities, and any other on or off-site improvements required by the Poulsbo Municipal Code. The City reserves the right to alter the required elements of the Project at any time during this Agreement in order to meet the needs of the City.

2. Duration of Agreement - Termination.

2.1 This Agreement shall become effective on the date that the last of the two parties signing the same affixes its signature. This Agreement shall remain in effect thereafter for an initial term of three years or until construction of the Project is finally accepted by the City and all claims and other administrative tasks related to the Project have been fully resolved whichever occurs first.

2.2 The parties anticipate that the Project will be completed and finally accepted within three years from the effective date of this Agreement. However, the parties agree that this Agreement will be automatically extended for up to an additional two years after expiration of its initial term in order to allow for scheduling contingencies and for sufficient time to complete the Project if the same has not been completed prior to the expiration of the initial term.

2.3 This Agreement shall terminate at such time as:

2.3.1 The Project reaches final completion and final acceptance and ownership and operation of the Project is permanently vested in the City; or

2.3.2 If there are claims or liens that remain at the time of final acceptance, at such time as all claims or liens and all administrative tasks related to the Project have been fully resolved; or

2.3.3 Upon the provision of 60 days written notice of termination provided by either party to the other party; or

2.3.4 Upon the mutual agreement of the parties.

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3. <u>Guiding Principles</u>. The parties agree that the following principles shall guide them in their interaction under this Agreement:

3.1 The City will be the owner of the Project and the resulting facilities, and KCCHA will act as the City's Project Manager to oversee and administer the design and construction of the Project, subject to the City's sole approval.

3.2 The City will have financial responsibility for the Project and will provide funds for construction and appropriate contingencies.

3.3 The City and KCCHA will work together closely and cooperatively to further the guiding principle of providing the highest possible benefit to the residents and businesses of the City of Poulsbo, and will assist each other in all ways to facilitate the successful, efficient, and cost effective completion of the Project.

3.4 Solely for the purposes of carrying out its responsibilities under this Agreement, the City authorizes KCCHA to exercise the powers of a public corporation, commission, or authority under RCW 35.21.730 et seq.

4. <u>Project Management Teams- Administration</u>.

4.1 In order to provide the project management services called for in this Agreement, KCCHA will assign the following personnel as its project management team:

Executive Director
Project Manager
Procurement Officer

4.2 In order to provide the oversight required of the City under this Agreement, the City will assign the persons holding the following positions as its project management team:

Mayor
Housing, Health and Human Services Director
Engineering Director
Planning Director
Finance Director
Superintendent of Public Works

The parties understand that the City's Mayor is, by virtue of her position, a member of the KCCHA governing board and as of the date this Agreement is entered into serves as the chair of that Board. The parties understand and agree that the Mayor will act on behalf of the City at all times during the term of this Agreement and will not act on behalf of KCCHA or its Board. The Mayor will have no fiduciary duties with respect to KCCHA's interests under this Agreement and the Mayor's sole fiduciary duty shall be to

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the City. The parties agree that the Mayor's involvement in this Agreement is not a conflict of interest for either party.

4.3 In the event that, during the course of this Agreement, project team members leave the employ of their respective jurisdictions, the parties may substitute others for the team members named above by providing written notice to the other party of the substituted team members and their new contact information.

4.4 If the City desires to use the services of KCCHA for media inquiries and public relations regarding the Project, KCCHA shall provide qualified personnel to perform such services.

4.5 The project team members of both parties shall meet as needed in order to ensure that timely decisions are made on all aspects of the design and construction process described in this Agreement or as otherwise required by the Project. Such meetings shall occur on a regular basis at least once every two weeks throughout the duration of this Agreement. KCCHA shall be responsible for scheduling such meetings. Special joint meetings may be scheduled at the request of either party.

4.6 At no time shall any employee of one party be deemed an employee of the other. Each party's employees shall remain employees of that party only and shall be paid solely by that party.

4.7 There is no separate legal or administrative entity created with respect to the responsibilities undertaken by the parties in this Agreement. The Mayor of the City and the Executive Director of KCCHA shall constitute a joint board for purposes of RCW 38.34.040(4)(a) and shall jointly administer this Agreement.

5. <u>Project Budget</u>.

5.1 A final total budget is still being determined by the parties; thus no construction work shall occur until a final budget is agreed to by the parties in writing. An initial payment of $7,000 has been allocated to KCCHA to reimburse existing costs, but no other payments shall be made until the final total budget is agreed to for the design and construction of the Project. The final budget, including appropriate contingencies, shall be adopted by the Poulsbo City Council and shall lie within the sole discretion of that body.

5.2 Upon adoption of the total Project budget by the City, the City will provide KCCHA with the budget and KCCHA will use its best efforts to provide the services described in this Agreement and to oversee the Project in such a manner as to secure completion of the Project within the budget.

5.3 The City may, in its sole discretion, act to revise the budget to suit the needs of the Project and the City at any time. Requests for budget amendments to cover unanticipated costs will be presented to the Poulsbo City Council for approval.

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6. <u>Project Financing - Grant Services</u>.

6.1 The City shall be solely responsible for the funding requirements of the Project. At this time, it is anticipated that the City will fund the Project from the following sources:

Bond Issue
General Funds
Funds relating to Affordable Housing Taxes
Real Estate Excise Tax

6.2 The City reserves the right to change the funding source for the Project at any time. Any capital needs of the Project that arise during the term of this Project and that cannot be paid from the funding source set forth in Section 6.1 or such other source as may be established from time to time shall be submitted to the Poulsbo City Council for funding from appropriate sources.

7. <u>Payments to KCCHA for Project Services</u>.

7.1 KCCHA shall be compensated for the project management services provide for in this Agreement on a time and materials basis as follows:

7.1.1 Time spent by KCCHA personnel in project management services shall be paid for by the City at the following hourly rates:

Executive Director:	$86.00 per hour
Project Manager:	$72.00 per hour
Procurement Officer:	$45.00 per hour
Supervisor of Rehabilitation	$42.00 per hour
Self-Help Construction Supervisor	$65.00 per hour

7.1.2 The City will not be charged separately for normal clerical or secretarial work, the expense of which has been calculated into KCCHA's hourly rates for project management personnel. Reimbursement will be made by the City for expenditures related to copying, postage, mileage and parking when travel other than to the City is required on City business, and long distance telephone calls. Other expenses shall be reimbursed when authorized in advance by the City.

7.1.3 The City will reimburse KCCHA for the cost of any special studies for which KCCHA and the City agree in advance in writing that KCCHA will advance funds. Such reimbursement will be at KCCHA's cost, without markup by KCCHA.

7.2 KCCHA shall be entitled to invoice the City for project management services no more frequently than once per month. The City shall pay

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invoices within sixty days from receipt unless the City disputes an invoice and so notifies KCCHA. Disputes regarding payment shall be resolved using the dispute resolution process set forth in Section 12 below.

7.3 KCCHA shall maintain accounts and records, including personnel and financial records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed under this Agreement so as to ensure proper accounting for all monies paid by the City to KCCHA. These records shall be maintained for a period of six (6) years after termination or expiration of this Agreement unless permission to destroy the records is granted by the City and the Office of the Archivist pursuant to RCW Chapter 40.13.

7.4 KCCHA's records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by the City and any other governmental agency so authorized by law during the performance of this Agreement and for a period of two (2) years after termination or expiration. The City shall have the right to inspect, review, and audit KCCHA's records on the Project at all reasonable times during regular business hours.

8 <u>Project Design - Architecture and Engineering Services</u>.

8.1 KCCHA will assist the City in the procurement of architectural, engineering, and other professional services necessary for the design and engineering of the Project. Specifically, KCCHA will:

8.1.1 Assist the City in drafting a scope of work for the architects, engineers, and other design professionals whose services will be required;

8.1.2 Assist the City in drafting and publicizing requests for proposals from the required architects, engineers, and other design professionals;

8.1.2 Review the responses to the request for proposals and make recommendations to the City concerning the most highly qualified architect, engineer, or design professional. Actual selection of architects, engineers, and other design professionals shall be within the City's sole discretion; and

8.1.4 Participate in interviews and assist the City in negotiations with the selected architect, engineer, or design professionals; and

8.1.5 Perform such other services with respect to the selection of the architects, engineers, and other design professionals necessary for the Project as the City and KCCHA may mutually agree upon.

8.2 All services procurement under this Section shall be accomplished consistent with the requirements of state laws applicable to the City and with the city's adopted procurement policies, if any.

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8.3 All contracts shall be entered into directly between the City and the architect, engineer, or design professional. The form of the contract to be used for architectural services will be AIA Form B101 - 2017 - Standard Form of Agreement between Owner and Architect, with such additions and modifications as may be agreed to by the City and KCCHA. The form of the contract for all engineers and other design professionals will be the City's standard form consultant agreement, with such additions and modifications as may be agreed upon by the City and KCCHA.

8.4 KCCHA shall administer all architecture, engineering, and design contracts as the Owner's Representative. KCCHA shall expeditiously review design documents during their development and advise the City on proposed Project Site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. KCCHA shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, and time requirements for procurement, installation, construction, and factors relating to construction cost, such as the costs of alternative designs or materials, budget, and possible economics.

8.5 KCCHA shall review all requests for payment by the architect, engineer, or other design professional and make recommendations to the City for payment. The City shall be solely responsible for payment of all architects, engineers, and other design professionals under contract with the City.

8.6 KCCHA shall make recommendations to the City concerning architectural, engineering, and design issues for the Project. All final decisions concerning design issues shall be within the sole discretion of the City.

8.7 KCCHA shall consult with the City and the design professionals regarding preparation of the Construction Contract Documents. The parties agree that they will use AIA Form A201 with such additions and modifications as may be agreed to by the City and KCCHA.

9. <u>Project Construction - Construction Management Services</u>.

9.1 KCCHA shall provide the City with all construction administration and construction management services necessary or desirable to cause final completion of the Project in a good and workmanlike manner and in substantial accordance with the Construction Contract Documents prepared during the design phase.

9.2 KCCHA shall assist the City in procuring a General Contractor to complete construction of the Project utilizing the competitive bidding process that the City is required to follow under applicable state law. The City shall retain sole contracting authority for the Project and all contracts for construction and related services shall be executed by the City.

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9.3 KCCHA shall act as the Owner's Representative and shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the General Contractor with KCCHA, the City, and the Project Architect in order to manage the Project substantially in accordance with the Project Schedule and the Contract Documents.

9.4 KCCHA shall fully enforce, administer, and take such actions as are necessary to implement any and all contracts with the Project Architect, General Contractor, and others in connection with the development and construction of the Project in accordance with the terms of their respective contracts. KCCHA shall notify and consult with the City regarding any breaches or defaults by any party contracting with KCCHA relating to the Project.

9.5 In consultation with the Project Architect and City staff, KCCHA shall oversee the course of construction and will conduct such activities as are necessary to ensure that the work is being performed in substantial accordance with the Requirements of the Contract Documents in a good and workmanlike manner, free of defects and deficiencies in the work, and free and clear of all liens.

9.6 KCCHA shall monitor construction progress and Project cash flow in order to assist the City and the Project Architect in ensuring that the Project is completed according to the Project Schedule and within the project budget. KCCHA and the City staff will meet on a periodic basis, but not less frequently than once every two weeks to review the Project's progress, costs, and financing.

9.7 KCCHA shall review with the City and the Project Architect all Applications for Payment and shall make recommendations to the City and the Project Architect regarding the payment of the same. KCCHA shall also assist the City with management of the Project retainage.

9.8 KCCHA shall assist the City and the Project Architect in the evaluation of change orders. Following approval of the Construction Documents by the City, there will be no changes in the work without the City's approval. During Project construction, KCCHA shall appraise the City of any proposed changes in the work and of KCCHA's recommendations on such changes prior to any action being taken. KCCHA and City staff designated by the City's Mayor may approve field orders and minor change orders that do not materially alter the work, i.e., that do not reduce the intended quality of the Project, result in an increase in the City's operational costs over time, or result in a substitution of any of the systems in the Project (including but not limited to HVAC, plumbing, electrical, elevators, roofing, fire and life safety, or infrastructure components). In the case of a material alteration, prior written approval by the City of the proposed change shall be required.

9.9 KCCHA shall assist the City and the Project Architect in making determinations as to Substantial Completion of the Project, compiling a punch list of

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incomplete or unsatisfactory items and a schedule for their completion, and Final Acceptance of the Project.

9.9 The City shall be responsible for paying all costs of constructing the Project, including cost overruns and claims, provided the City has previously provided written authorization for such cost overruns and claims. KCCHA shall not be responsible for any portion of such construction costs, provided, that nothing in this paragraph shall be construed as precluding claims by the City against KCCHA for breach of contract or for claims falling within the indemnity provisions of Section 11 below. The parties agree that in the event that a claim arises between them over responsibility for a cost overrun or claim made by any contractor, subcontractor, or supplier on the Project, all parties to the dispute, including KCCHA and the City, necessary to resolve the claim shall be made parties to the same dispute resolution proceeding, notwithstanding the provisions of Section 12 below.

10. Indemnity.

10.1 KCCHA will indemnify, hold harmless, and defend the City, its elected and appointed officers, agents, and employees, from and against any and claims, losses, and liabilities for injuries to persons or damage to property caused by or arising out of the negligent acts, errors, or omissions of KCCHA, its officers, agents, and employees, in performing the actions required of KCCHA in this Agreement. The indemnity provisions of this subsection shall apply only to the extent that KCCHA's negligent acts, errors, or omissions caused or contributed thereto. In order to provide a complete indemnity to the City from claims brought by KCCHA's officers and employees for injuries or damage caused by KCCHA's negligence, KCCHA expressly waives immunity from such injury claims to the extent, but only to the extent, the same constitute claims against the City. This waiver has been mutually negotiated by the parties.

10.2 The City will indemnify, hold harmless, and defend KCCHA, its elected and appointed officers, agents, and employees, from and against any and claims, losses, and liabilities for injuries to persons or damage to property caused by or arising out of the negligent acts, errors, or omissions of the City, its officers, agents, and employees, in performing the actions required of the City in this Agreement. The indemnity provisions of this subsection shall apply only to the extent that the City's negligent acts, errors, or omissions caused or contributed thereto. In order to provide a complete indemnity to the KCCHA from claims brought by the City's officers and employees for injuries or damage caused by the City's negligence, the City expressly waives immunity from such injury claims to the extent, but only to the extent, the same constitute claims against KCCHA. This waiver has been mutually negotiated by the parties.

10.3 All services provided by KCCHA under this Agreement shall be performed in a manner consistent with the standard of care that other professionals performing similar services would exercise on similar projects in the same community.

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KCCHA will perform all duties and services and make all decisions called for under this Agreement promptly and without unreasonable delay. KCCHA shall indemnify, defend, and hold the City harmless from and against any claims, suits, or causes of action brought by any person, including but not limited to the Project architect and the contractor selected to construct the Project, caused by or arising out of KCCHA's failure to perform the services required by this Agreement according to the standard set forth in this subsection. The indemnity provisions of this subsection shall apply only to the extent KCCHA's failure to perform according to such standards caused or contributed to the damages sought in the claims, suits or causes of action.

10.4 The indemnity provisions of this Section 12 shall survive the expiration or termination of this Agreement for any claims, losses, liabilities, suits, or causes of action caused by or arising out of acts, errors, or omissions of the parties occurring prior to such expiration or termination.

11. <u>Insurance</u>.

11.1 The City shall obtain or require the General Contractor to obtain, all necessary insurance policies to protect the Project, including but not limited to, Builder's Risk policies, and shall direct that all contractors and other vendors associated with the Project carry appropriate insurance.

11.2 The City and KCCHA will review their respective insurance policies and attempt to make the other agency an additional insured on all policies pertaining to the Project. If the City or KCCHA is unable to accomplish this, each party will notify the other party of the issue and additional insurance policies may be recommended and obtained as needed.

12. <u>Dispute Resolution</u>.

12.1 It is not anticipated that any significant disputes will arise in the course of this cooperative interlocal agreement. If disputes do arise, however, they will be handled as follows:

12.1.1 The first step will be for the Mayor of the City and the Executive Director of KCCHA to meet in an attempt to resolve the dispute.

12.1.2 If the Mayor and Executive Director are unable to resolve the dispute within two weeks of meeting, the Poulsbo City Council and the KCCHA Board will convene a special joint meeting to address the issue.

12.1.3 If, within two weeks after meeting in joint session, the parties are together unable to resolve the dispute, the Mayor of the City and the Executive Director of KCCHA will meet to agree on a non-binding mediator who will be hired to convene the parties within thirty days. The cost of the mediator will be shared equally by

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the parties. If the parties cannot agree on a mediator, one will be appointed by the presiding judge of the Kitsap County Superior Court.

12.1.4 If the dispute is still not resolved within two weeks after the parties meet in non-binding mediation, either party may then seek a judicial remedy.

12.1.5 The parties agree that they will not seek relief under this Agreement in a court of law unless and until each of these dispute resolution steps is exhausted. The preceding sentence shall not apply to the extent any applicable statute of limitations will or may run during the time that may be required to exhaust the dispute resolution steps set forth above, provided, however, that the parties agree that any legal proceeding brought during such period may be stayed, if consistent with applicable law and if the rights of the parties will not be prejudiced thereby, while the dispute resolution steps set forth above are satisfied.

12.2 The judicial forum for resolving any dispute, after the procedures outlined in subsection 12.1 are exhausted, will be Kitsap County Superior Court.

12.3 Each party will bear its own costs and attorney's fees associated with any dispute under this agreement, including any dispute ultimately resolved through litigation.

13. Severability. In the event that any section, paragraph, sentence, term, phrase, or clause of this Agreement conflicts with applicable law or is bound by any court of competent jurisdiction to be contrary to law, such conflict shall not affect the validity of other sections, paragraphs, sentences, terms, phrases, or clauses of this Agreement that can be given effect without the conflicting provisions and to this end the sections, paragraphs, sentences, terms, phrases, and clauses of this Agreement shall be deemed to be severable.

14. Force Majeure. The parties to this Agreement will not be required to carry out its terms during a period when either party is prevented from doing so by a force majeure event including, but not limited to, natural disasters such as windstorms and earthquakes, terrorist attacks, or other public emergencies, including those associated with the COVID-19 pandemic, and injunctions or court orders.

15. Non-Waiver. No waiver of any condition, provision, or covenant in this Agreement or any breach thereof shall be taken to constitute a waiver of any other condition, provision, covenant, or breach.

16. Assignment. Neither party shall assign its rights and obligations under this Agreement without the express written consent of the other.

17. Miscellaneous Provisions.

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17.1 Section headings have been inserted in this Agreement only as a matter of convenience of reference, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

17.2 This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

17.3 Both parties participated equally in the drafting of this Agreement and no provision of this Agreement shall be construed against either party solely by virtue of that party's having drafted the provision.

18. Integration. This Agreement constitutes the entire understanding between the parties pertaining to the Project. Any and all prior understandings and agreements are hereby superseded by this Agreement and of no further effect. No modification, amendment, or termination of this Agreement shall be valid or effective unless evidenced by a further written instrument signed by both parties.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. Governing Law. This Agreement is entered into and will be interpreted under Washington law.

21. Filing. In accordance with RCW 38.34.040, this Agreement will be filed with the Kitsap County Auditor or listed on the web sites of the parties prior to its effective date.

[signatures to follow]

Dated as of the date set forth above.

KITSAP COUNTY CONSOLIDATED HOUSING AUTHORITY

DocuSigned by:
Heather Blough
8E1A8359797C431...

Heather Blough, Executive Director

CITY OF POULSBO

DocuSigned by:
77AA4B38C18A4BA...

Becky Erickson, Mayor

ATTEST/AUTHENTICATED:

DocuSigned by:
D21DA14DCC754A8...

Rhiannon Fernandez, CMC, City Clerk

Approved as to Form:

DocuSigned by:
James Haney
85394CE968994B5...

James E. Haney, City Attorney