



Intergovernmental Agreement

Housing Bond Measure Phase I

Metro Contract No. XXXXX

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and the Housing Authority of Clackamas County ("Local Implementation Partner"), located at 13930 Gain Street, Oregon City, Oregon 97045 and is dated effective as of the last day of signature set forth below (the "Effective Date").

RECITALS

A. The electors of Metro approved Ballot Measure 26-199 on November 6, 2018 (the "Bond Measure"), authorizing Metro to issue \$652.8 million in general obligation bonds to fund affordable housing (the "Bonds").

B. On January 31, 2019, the Metro Council adopted Resolution No. 19-4956, approving the Metro Affordable Housing Bond Measure Program Work Plan (the "Work Plan") which, among other things, allows Metro to distribute a portion of the proceeds of the Bonds (the "Bond Proceeds") to eligible local government affordable housing implementation partners.

C. Local Implementation Partner is a participating local government partner potentially eligible to receive Bond Proceeds under the Work Plan.

D. In accordance with the Work Plan, Local Implementation Partner is in the process of completing its Local Implementation Strategy, and anticipates it will be approximately five months before Local Implementation Partner has completed this strategy and is eligible to receive Bond Proceeds under the Work Plan.

E. Local Implementation Partner has identified an opportunity to acquire certain real property and improvements in the City of Gladstone, which Local Implementation Partner intends to rehabilitate to create 45 single-room occupancy (SRO) units providing long-term supportive housing.

F. In an effort to advance this opportunity without delay, Local Implementation Partner desires to use Bond Proceeds to acquire the Gladstone property prior to Local Implementation Partner's completion of its Local Implementation Strategy.

G. The parties desire to enter into this Agreement to provide the terms and conditions under which Metro will provide advance Bond Proceeds to Local Implementation Partner to use for property acquisition.

AGREEMENT

1. Purpose

The purpose of this Agreement is to provide Bond Proceeds to Local Implementation Partner for it to use to acquire certain real property commonly described as 18000 SE Webster Road, Gladstone, Oregon, and legally described in Exhibit A attached to this Agreement (the "Property"). Following acquisition, Local Implementation Partner plans to enter into a development and disposition agreement with a third-party (the "Project Developer") to redevelop the Property into affordable housing that supports veterans, seniors, and the disabled who are experiencing homelessness so they may transition to long-term supportive housing (the "Project"). The Project is more fully described in Exhibit B attached to this Agreement.

2. Metro Funding and Eligible Uses

Subject to Local Implementation Partner's full and complete performance under this Agreement, including without limitation, the Conditions Precedent to funding set forth below in Section 3, Metro will disburse to Local Implementation Partner Bond Proceeds in the amount not to exceed \$2.7 million (the "Project Funds"). Local Implementation Partner may use the Project Funds, and any investment earnings thereon, only for the Property acquisition costs set forth in the "Permitted Acquisition Costs List" attached hereto as Exhibit C. Investment earning on the Project funds may only be expended on costs set forth in the Permitted Acquisition Costs List.

3. Conditions Precedent to Funding

The conditions precedent to disbursement (the "Conditions Precedent") of the Project Funds set forth on attached Exhibit D must be satisfied prior to Metro's obligation to provide the Project Funds to Local Implementation Partner. These Conditions Precedent to disbursement are solely for Metro's benefit, and Metro will have the sole right and discretion to waive by written notice any of the conditions.

4. Affordable Housing Restrictive Covenant

Contemporaneously with Local Implementation Partner's acquisition of fee title to the Property, Local Implementation Partner will cause to be recorded a fully executed and acknowledged Affordable Housing Restrictive Covenant, substantially in the form attached hereto as Exhibit E (the "Covenant"). The Covenant will be executed and acknowledged by Metro and Local Implementation Partner and recorded in the official deed records of Clackamas County, free and clear of all liens and encumbrances, except for the permitted exceptions agreed to by Metro. If

for any reason Local Implementation Partner fails to record the Covenant, then Metro may, at its sole option and upon written notice to Local Implementation Partner, terminate this Agreement, in which case any Project Funds delivered to Local Implementation Partner shall be immediately due and payable by Local Implementation Partner to Metro. The parties to this Agreement acknowledge and agree that upon the closing of the financing of the Project, Local Implementation Partner and the Project developer will execute, deliver and record a restrictive covenant imposing long-term affordability restrictions on the Project in form and substance acceptable to Metro, at which time Metro will release the Covenant so that it is removed from title.

5. Failure to Acquire; Failure to Redevelop

a) By accepting the Project Funds, Local Implementation Partner agrees to use best efforts to diligently acquire the Property and develop the Property to support the affordable housing program as described in the attached Exhibit B. If Local Implementation Partner fails to acquire the Property within thirty (30) days after the Effective Date, unless Metro otherwise directs in writing, the Project Funds, including any interest earned thereon shall be immediately due and payable to Metro by Local Implementation Partner.

b) If Local Implementation Partner acquires the Property but thereafter is unable to proceed with the development and financing of the Project or to commence construction support to the Project described in the attached Exhibit B on or before three (3) years following the Effective Date, Local Implementation Partner will immediately repay Metro the amount of the Project Funds, at which time Metro will release the Covenant recorded against the Property.

c) Local Implementation Partner acknowledges and expressly affirms its repayment obligations set forth in this section even if failure to acquire or redevelop the Property is through no fault of Local Implementation Partner. The obligations to repay include, without limitation, the obligation to return any Project Funds that Local Implementation Partner may have already obligated or spent on purposes approved and set forth on Exhibit C.

6. General Obligation Bonds

a) Local Implementation Partner acknowledges that the Project Funds are proceeds derived from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. Local Implementation Partner covenants and agrees that it will take no actions that would impact the validity of the Bonds or cause Metro not to be able to levy and collect the real property taxes imposed to repay these bonds, which are exempt from

Oregon's constitutional property tax limitations. Local Implementation Partner further covenants and agrees the Project Funds will be used only to pay for or reimburse costs that are of a type that is properly chargeable to a capital account (or would be so chargeable with a proper election) to comply with the Oregon Constitution and other applicable laws with respect to the permitted expenditure of general obligation bond proceeds. Local Implementation Partner will take all reasonable measures to ensure that Bond Proceeds are expended consistent with the purposes of the Work Plan.

b) If Local Implementation Partner breaches the foregoing covenants, Local Implementation Partner will immediately undertake whatever remedies or other action may be necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, repayment to Metro of the Project Funds.

7. Right to Withhold payments

Metro may withhold payments to Local Implementation Partner as necessary, in Metro's reasonable opinion, to protect Metro against any loss, damage or claim which may result from Local Implementation Partner's performance or failure to perform under this Agreement.

8. Funding Recognition

Local Implementation Partner must publically recognize Metro and use of Metro's Bond proceeds in any publications, media presentations, or other presentations referencing the Property or the Project produced by or at the direction of Local Implementation Partner, including, without limitation, any on-site signage. Local Implementation Partner will also take all reasonable measures to require the Project Developer to recognize Metro and use of Metro's Bond proceeds in connection to any publications, media presentations, or other presentations referencing the Property or the Project. Local Implementation Partner will provide Metro with thirty (30) days' notice of any event recognizing, celebrating or commemorating any ground-breaking, completion, ribbon cutting or opening of an affordable housing development of the Property, and an opportunity to participate. Local Implementation Partner shall ensure that Metro will be officially recognized for its contribution to Project funding at any such event, and provide a speaking opportunity for the Metro elected official representing the district in which the Property is located, if such opportunities are provided to other third parties.

9. Notice of Project Risk

Local Implementation Partner must inform Metro immediately of any actual or potential problems or defects that present potential risk to the Project moving forward.

10. Termination

(a) Metro and Local Implementation Partner may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision will be effective upon ten (10) days' written notice of termination issued by Metro subject to that mutual agreement. In the event of a joint termination, Local Implementation Partner will reimburse Metro for all funds distributed to Local Implementation Partner under this Agreement, as well as any earnings thereon.

(b) Metro may terminate this Agreement at any time during the term if Metro reasonably determines that Local Implementation Partner has failed to comply with any provision of this Agreement and is in default hereunder. Metro will promptly document such default and notify Local Implementation Partner in writing of such determination. Local Implementation Partner will have thirty (30) days after receipt of written notice to cure any default. If the default cannot be cured within thirty (30) days, Local Implementation Partner will not be in default so long as it reasonably pursues with all due diligence to cure the default. Local Implementation Partner will be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default. In the event of termination of this Agreement pursuant to Section 5 or 6, Local Implementation Partner will reimburse Metro for all funds distributed to Local Implementation Partner under this Agreement, as well as any earnings thereon.

11. Local Implementation Partner Reporting Requirements

(a) Beginning with the disbursement of the Project Funds, and continuing each calendar quarter thereafter until the Property is acquired, Local Implementation Partner will provide a report to Metro on or before the 15th day after the end of the immediately preceding calendar quarter containing the information described in this paragraph. Local Implementation Partner's first report will be due on or before October 15, 2019. Each report will contain: (i) an itemized list of Local Implementation Partner's expenditure of the Project Funds (and interest earnings thereon) through the end of the applicable calendar quarter detailing each entity to whom moneys were directly paid by Local Implementation Partner and the amount paid, (ii) information on Local Implementation Partner's progress in completing the Property acquisition against Local Implementation Partner's established timelines or deadlines, and (iii) a copy of Local

Implementation Partner's itemized financial report of income and expenses for the acquisition of the Property to date.

(b) Promptly after acquisition of the property and in no event later than the expiration date of this Agreement, Local Implementation Partner will furnish Metro with a final report on the Property acquisition. The final report will contain a compilation related to the acquisition of the Property of the same information as provided in each quarterly report on Local Implementation Partner's expenditure of the Project Funds (and interest earnings thereon) and Local Implementation Partner's final itemized financial report of income and expenses for the Property acquisition.

(c) Local Implementation Partner will provide to Metro any other additional reports as Metro may reasonably request from time to time.

12. Audits, Inspections and Retention of Records

Local Implementation Partner will keep proper books of account and records on all activities associated with the expenditure of the Project Funds disbursed by Metro under this Agreement. Local Implementation Partner will maintain these books of account and records in accordance with generally accepted accounting principles and will retain the books of account and records at least until the later of (a) six (6) years from the disbursement of the Project Funds to Local Implementation Partner or (b) the date that any dispute or controversy arising from this Agreement is resolved. Local Implementation Partner will permit Metro and its duly authorized representatives, upon prior written notice, to inspect its properties, all work done, labor performed and materials furnished during normal business hours, and to review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of the Project Funds received from Metro. Access to these books of account and records is not limited to the required retention period. Metro's authorized representatives will have access to records upon reasonable notice at any reasonable time for as long as the records are maintained. Metro expects the Bonds financing the Project Funds to be outstanding until approximately May of 2039. Local Implementation Partner will maintain copies of invoices and other records demonstrative of the expenditures of the Project Funds by Local Implementation Partner through May of 2042, on the date that is three (3) years from the maturity date of the Bonds.

13. Notices and Parties' Representatives

Any notices permitted or required by this Agreement will be addressed to the other party's representative(s) designated in this Section of this Agreement and will be deemed provided (a)

on the date they are personally delivered, (b) on the date they are sent via facsimile, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing notice in compliance with this Section of this Agreement.

Metro:

Emily Lieb

600 NE Grand Ave.

Portland, OR 97232

503-797-1921

Emily.Lieb@oregonmetro.gov

Local Implementation Partner:

Housing Authority of Clackamas County

13930 Gain Street

Oregon City, Oregon 97045

ATTN: _____

14. State and Local Law Compliance

Local Implementation Partner must comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to its acquisition and ownership of the Property, including future construction and development of the Property. By accepting the Project Funds, Local Implementation Partner agrees to use the Property solely for lawful purposes that comply with the Covenant.

15. Discrimination Prohibited

No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, or national origin, 42 U.S.C. §2000d (Title VI), or on the grounds of religion, sex, ancestry, age, or disability as that term is defined in the Americans with Disabilities Act. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of Local Implementation Partner receiving funds pursuant to this Agreement.

16. Insurance; Indemnification

(a) Metro is self-insured for general liability insurance and workers' compensation insurance coverage and is responsible for the wages and benefits of its respective employees performing any work or services related to this Agreement. Local Implementation Partner is responsible for the wages and benefits of its respective employees performing any work or services related to

this Agreement and has the following types of insurance, covering Local Implementation Partner, its employees, subcontractors and agents:

- i. ISO (Insurance Services Office) Approved Commercial General Liability policy, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence. The policy includes coverage for bodily injury, death, property damage, personal injury, products/completed operations, and contractual liability assumed under this Agreement;
- ii. Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per accident or combined single limit; and
- iii. Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$1,000,000 per accident or disease.

(b) Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30 and Article XI, Section 10 of the Oregon Constitution, Local Implementation Partner will defend, indemnify and hold harmless, Metro from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses (including any attorney's fees in defense of Metro or any attorney's fees incurred in enforcing this provision) on account of personal injury, death, or any damage to or loss of property or revenues arising out of or in any way connected with its performance of this Agreement, or resulting in whole or in part from any act, omission, negligence, fault or violation of law or ordinance by Local Implementation Partner, its employees, agents, sub-contractors, directors or officers.

(c) In no event will either party be liable for special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or for any failure of performance related to delivery of the Project Funds for this Agreement, however caused, whether or not arising from a party's sole, joint or concurrent negligence.

17. Governing Law

This Agreement will be governed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflicts of laws, rules, and doctrines. Any litigation between the parties that arises out of or relates to the performance of this Agreement will occur in the Multnomah County Circuit Court.

18. No Third Party Beneficiaries

Local Implementation Partner and Metro are the only parties to this Agreement and are the only parties entitled to enforce its terms and the sole beneficiaries hereof. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right, whether

directly, indirectly, or otherwise, to third persons any greater than the right and benefits enjoyed by the general public.

19. Relationship of Parties

Nothing in this Agreement nor any acts of the parties hereunder shall be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture or any association between any Local Implementation Partner and Metro. Furthermore, Metro will not be considered the owner, contractor or the developer of the Property. This Agreement is not intended to be a contract that provides for the development or construction of the Property, either directly with a construction contractor or through a developer. Metro specifically waives any provision contained in this Agreement, to the extent it is construed to provide Metro the right to manage, direct or control the developer, general contractor or the subcontractors. The rights and duties of the developer, the general contractor and the subcontractors are the subject of a separate contract or contracts with Local Implementation Partner to which Metro is not a party.

20. Assignment; Merger; Entire Agreement

This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by Local Implementation Partner without Metro's written consent. This Agreement and attached exhibit(s) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The failure to enforce any provision of this Agreement does not constitute a waiver by Metro of that or any other provision. No waiver, consent, modification or change of terms of this Agreement will bind either party unless it is in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement will not constitute a waiver by that party of that provision, or of any other provision.

21. Further Assurances

Each of the Parties will execute and deliver any and all additional papers, documents, and other assurances, and will do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties hereto.

22. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

METRO

By: _____

Name: _____

Title: _____

Date: _____

LOCAL IMPLEMENTATION PARTNER

By: _____

Name: _____

Title: _____

Date: _____

- Exhibit A: The Property
- Exhibit B: Affordable Housing Redevelopment Project Description
- Exhibit C: Permitted Acquisition Costs List
- Exhibit D: Conditions Precedent to Funding
- Exhibit E: Affordable Housing Restrictive Covenant



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – The Property

Exhibit B – Affordable Housing Redevelopment Project Description



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600 NE Grand Ave.
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Exhibit C – Permitted Acquisition Costs List



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Exhibit D – Conditions Precedent to Funding



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Exhibit E – Affordable Housing Restrictive Covenant



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