

**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736  
(503) 797-1700

# Intergovernmental Agreement

## Affordable Housing Bond Measure Program IGA

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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 City of Hillsboro ("Local Implementation Partner" or "LIP"), located at 150 E. Main Street, Hillsboro OR 97123, 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, which, among other things, provides that Metro will distribute a portion of the proceeds of the Bonds (the "Bond Proceeds") to eligible local government affordable housing implementation partners, and LIP is a participating local government partner eligible to receive Bond Proceeds.

C. The parties desire to enter into this Agreement to provide the terms and conditions under which Metro will provide Bond Proceeds to LIP to implement the Bond Measure goals, requirements, and restrictions set forth in the Work Plan.

### AGREEMENT

**1. Definitions.** In addition to the definitions above, capitalized terms used in this Agreement have the definitions set forth in this Section 1.

1.1. "Administrative Costs" means Capital Costs that are not Direct Project Costs, including general program administrative expenses (e.g. staff support and overhead costs attributable to Bond Measure program implementation), expenses related to community engagement and outreach, and payments to third-party consultants (e.g. realtors, appraisers, surveyors, title insurers, environmental evaluators, designers, and engineers).

1.2. "Administrative Share" means that portion of the Bond Proceeds totaling \$855,939.

1.3. “Affordable Housing” means land and improvements for residential units occupied by low-income households making 80% or less of area median income, consistent with the intents and purposes of the Bond Measure.

1.4. “Affordable Housing Project(s)” or “Projects” means Affordable Housing that is developed, built or acquired by LIP using Bond Proceeds, or supported by LIP through grants or loans of Bond Proceeds, burdened by a Restrictive Covenant.

1.5. “Area Median Income” or “AMI” means median gross household income, adjusted for household size, for the Portland, Oregon metropolitan statistical area as established each year by HUD.

1.6. “Capital Costs” means costs of Affordable Housing that are capitalizable under generally acceptable accounting principles (GAAP), which costs include the costs of capital construction, capital improvements or other capital costs, as those terms are defined by the relevant provisions of the Oregon Constitution and Oregon law (including ORS 310.140).

1.7. “Concept Endorsement” is as defined in Section 4.1, below.

1.8. “Conversions” means conversion of existing, occupied market-rate housing units to Affordable Housing units burdened by a Restrictive Covenant.

1.9. “Direct Project Costs” means Capital Costs that are expended for the acquisition, development, or construction of an Affordable Housing Project.

1.10. “Disbursement Request” is as defined in Section 4.3, below.

1.11. “Eligible Share” means that portion of the Bond Proceeds totaling \$40,657,081.

1.12. “Final Approval” is as defined in Section 4.2, below.

1.13. “LIS” means the LIP’s local implementation strategy document adopted by LIP and attached to this Agreement as **Exhibit A**.

1.14. “LIS Annual Progress Report” is as defined in Section 9.1, below.

1.15. “New Construction” means development and construction of a new Affordable Housing Project.

1.16. “Oversight Committee” means the Affordable Housing Bond Community Oversight Committee created pursuant to Metro Code Section 2.19.260.

1.17. “Project Funds” means that portion of Eligible Share committed through the Project approval process set forth and distributed in accordance with Section 4.

1.18. “Property Acquisitions” means real property acquisitions by LIP to be used for future development of an Affordable Housing Project.

1.19. “Regional Investment” is as defined in Section 2.2, below.

1.20. "Regional Site Acquisition Program" means the program implemented by Metro to use Bond Proceeds to acquire and develop regionally significant sites for Affordable Housing.

1.21. "Restrictive Covenant" is as defined in Section 5, below.

1.22. "Term" is as defined in Section 11.1, below.

1.23. "Unit Production Targets" means those targets set forth in Section 2.1 below, and include the "Total Unit Target," the "30% or Below Target," the "31%-60% Unit Target," the "61-80% Cap," and the "Two-Bedroom+ Target," each as defined in Section 2.1.

1.24. "Unit(s)" means residential units in an Affordable Housing Project.

1.25. "Work Plan" means Metro's Affordable Housing Bond Measure Program Work Plan adopted by the Metro Council by Resolution 19-4956, as subsequently amended by the Metro Council on October 17, 2019 by Resolution 19-5015.

## **2. Unit Production Targets**

2.1. Unit Production Targets. LIP hereby agrees to adopt and take all necessary and appropriate action to implement the Unit Production Targets set forth below. The parties anticipate the LIP's Unit Production Targets will be met using a combination of funds, including LIP's Eligible Share and Metro's Regional Investment. LIP's failure to make reasonable progress towards meeting its Unit Production Targets, in accordance with the timeline attached hereto as **Exhibit B**, is grounds for termination of this Agreement by Metro as provided in Section 11, after which Metro shall have no further obligation to distribute the Eligible Share.

2.1.1. Total Unit Target: 284. This is the minimum total number of Units to be built or acquired using LIP's Eligible Share. Should LIP build or acquire additional units above the Total Unit Target using its Eligible Share, those units may be occupied by households earning anywhere between 0-80% so long as 30% or Below Target and the 31%-60% Unit Target have been satisfied.

2.1.2. 30% or Below Target: 117. This is number of the Total Unit Target that will be restricted to households earning 30% or less of AMI, in accordance with the terms of the Restrictive Covenant.

2.1.3. 31%-60% Unit Target: 139. This is number of the Total Unit Target that will be restricted to households earning 31%-60% of AMI, in accordance with the terms of the Restrictive Covenant.

2.1.4. 61-80% Cap: 28. This is the maximum number of units contributing to the Total Unit Target that may be restricted to households earning 61-80% of AMI.

2.1.5. Two-Bedroom+ Target: 142. This is number of the Total Unit Target that will be two bedrooms or more.

2.2. Impact of Regional Program. Metro will use ten percent of the total Bond Proceeds to fund and operate its Regional Site Acquisition Program. The parties expect that Metro's Site Acquisition Program will spend approximately \$4,517,453 within LIP's jurisdictional boundary (the "Regional Investment"). Units created in projects that utilize Regional Investment will contribute towards LIP's Unit Production Targets, unless otherwise agreed to by the parties. Metro will make good faith efforts to coordinate and consult with LIP to ensure Metro's decisions regarding the Regional Investment support LIP in reaching its Unit Production Targets. Once LIP has spent or has committed to spend 75% of its Eligible Share, if Metro has not yet spent, or committed to spend, the Regional Investment, then the parties will meet to discuss potential alternative options for how the Regional Investment could be spent by Metro to support LIP's remaining Unit Production Targets. If following such meeting the parties are still unable to identify opportunities for collaboration or agreeable potential alternative options, then LIP's Unit Production Targets will be reduced by the lesser of (a) ten percent or (b) the proportionate share equal to the amount of Regional Investment Metro has not yet spent.

### **3. Local Implementation Partner's Eligible Share.**

3.1. Direct Project Costs; Consistency with LIS. Subject to the terms and conditions of this Agreement, including Section 4, below, and the requirements, limits, and restrictions set forth in both the Work Plan and the Bond Measure, Metro will provide to LIP the Eligible Share on a Project-by-Project basis. LIP may only spend the Eligible Share on Direct Project Costs that are consistent with its LIS, as determined by Metro, in Metro's reasonable discretion, and will spend no portion of the Eligible Share on Administrative Costs.

3.2. Public or Private Ownership. LIP may use its Eligible Share to support the creation of Affordable Housing that is either privately or publicly owned. The Eligible Share may be contributed to privately-owned Projects in the form of loans or grants on terms approved by LIP. The identification and selection of a Project will be at the discretion of LIP, provided, however, all Project selections must comply with the LIS and contribute towards the Unit Production Targets. Publicly-owned Affordable Housing financed with the LIP's Eligible

Share must contribute to the Unit production Targets and must comply with the LIS and the terms and conditions of this Agreement, including, without limitation, the same Project approval process and requirements provided for in Section 4 below.

3.3. Approved Project Types. LIP may use its Eligible Share only for the types of projects described in the Work Plan. As of the Effective Date, the Work Plan sets forth the following approved types of Affordable Housing Projects: (a) New Construction, (b) Conversions, and (c) Property Acquisitions.

#### **4. Metro Approval Process; Disbursement of Funds; Repayment**

4.1. Concept Endorsement. In order for LIP to receive a disbursement of its Eligible Share to fund a New Construction or Conversion Project, LIP must receive an initial funding commitment for such Project (the “Concept Endorsement”) from Metro. LIP’s request for a Concept Endorsement must include general project information, including a project narrative, preliminary sources and uses information, a draft project site plan, copies of relevant due diligence documents, and any other information Metro deems reasonably necessary to issue a Concept Endorsement. Metro will issue the Concept Endorsement to LIP upon Metro’s determination that (a) the Project will reasonably contribute to the Unit Production Targets relative to the amount of the Eligible Share LIP proposes to use for the Project; and (b) the Project will be consistent with the LIS, the Work Plan and the Bond Measure.

4.2. Final Approval. In order for LIP to use its Eligible Share for an Affordable Housing Project, LIP must have received final approval from Metro, as described in this section (“Final Approval”). Metro will issue Final Approval to LIP upon Metro’s determination that (a) the proposed Project reasonably contributes to the Unit Production Targets relative to the amount of the Eligible Share proposed to be used for the Project; and (b) the Project is consistent with the LIS, the Work Plan, and the Bond Measure. LIP’s request for Final Approval will include the Project information described above in Section 4.1, as well as any additional information Metro reasonably requests related to the finalized development program, including design development drawings and an updated sources and uses budget. If after receiving Final Approval, the amount of the Eligible Share initially proposed and approved increases or the Project’s unit count, bedroom mix, or affordability level changes, then LIP must submit an amended request for Final Approval for the Project. Metro will review such an amended request (along with any related Disbursement Request) expeditiously, making best efforts to accommodate LIP’s anticipated Project closing timeline.

4.3. Disbursement. Following Metro's Final Approval of LIP's proposed use of its Eligible Share for an Affordable Housing Project, LIP may request disbursement of the Project Funds from Metro ("Disbursement Request"). Such request will be made in writing (a) no more than 45 days and (b) no less than 10 business days prior to any anticipated closing or need for use. The Disbursement Request will include: (a) a certification from LIP to Metro that the Project information LIP provided to Metro in connection with its request for Final Approval has not changed or been modified in any material way; (b) a completed draft of the proposed Restrictive Covenant that LIP intends to record against the Project in accordance with Section 5 below, (c) a list of finalized sources and uses, (d) a final construction contract schedule of values, if applicable, and (d) wiring instructions or other instructions related to the transmittal of funds. LIP will provide to Metro any other information as Metro may reasonably request related to the Project. Metro will review Disbursement Requests expeditiously and will disburse funds within 10 business days of receiving a completed Disbursement Request.

4.4. Project Failure and Repayment. LIP will use the Project Funds strictly in accordance with the manner and method described in the Final Approval. If the Project financing transaction for which disbursement was sought fails to close within sixty (60) days after Metro disburses the requested funds, then, unless otherwise directed in writing by Metro, LIP will immediately repay to Metro the amount of its Eligible Share disbursed for the Project, including any interest earned thereon. If LIP uses Project Funds for a Property Acquisition, and is thereafter unable to make substantial progress, as reasonably determined by Metro, towards the development of Affordable Housing on the property within four (4) years following the closing date of the Property Acquisition (or such other time period agreed to in writing by Metro), LIP will repay to Metro the amount of the Eligible Share disbursed for the Property Acquisition. LIP acknowledges and expressly affirms its repayment obligations set forth in this section even if such failure is through no fault of LIP. LIP's remaining Eligible Share will be adjusted and increased to reflect such repayment.

## **5. Affordable Housing Restrictive Covenant.**

5.1. General Provisions and Recording Obligations. For all Projects that receive Bond Proceeds, LIP will ensure an affordable housing restrictive covenant (a "Restrictive Covenant") is recorded on the title to the land that comprises the Project. The Restrictive Covenant must be recorded at closing, or upon its contribution of the Bond Proceeds to a Project. LIP will provide Metro a copy of the recorded Restrictive Covenant within ten (10) business days following its recording. If for any reason LIP fails to record a Restrictive Covenant

in accordance with this section, Metro may, at its sole option and upon written notice to LIP, terminate this Agreement in accordance with Section 11, in which case LIP will refund Metro the Bond Proceeds disbursed to LIP for such Project.

5.2. Form for Property Acquisitions. For Property Acquisitions, the Restrictive Covenant will be granted to Metro directly, be recorded in such priority approved by Metro, and shall be substantially in the form attached hereto as **Exhibit C**, or as otherwise approved by Metro.

5.3. Form for New Construction and Conversion Projects. For New Construction Projects and Conversion Projects, the Restrictive Covenant will (a) acknowledge the use of Bond Measure funds, (b) include applicable long-term affordability restrictions, (c) burden the property for a minimum duration of sixty (60) years or thirty (30) years for Conversion Projects where the building is more than ten (10) years old), (d) provide monitoring and access rights to LIP and Metro, (e) name Metro as a third-party beneficiary and (f) unless otherwise agreed to in writing by Metro, be recorded in a priority position only subject to and subordinate to a primary first mortgage or deed of trust and a State low-income housing regulatory agreements. The monitoring, access and third party beneficiary language will be subject to Metro's review and approval during the Final Approval process. LIP acknowledges that such language will require Projects to provide to Metro certain data (including financial reports, physical inspection reports, and tenant data) typically collected and prepared by Oregon Housing and Community Services. Metro acknowledges that the Restrictive Covenant may provide for a waiver or temporary relief from the limitations on qualifying income, in accordance to address incomes rising in place to avoid undue hardship or displacement, or to conform to other regulatory or policy requirements.

## **6. Project Information Reports; Funding Recognition**

6.1. Project Information and Updates. Upon Metro's disbursement of Eligible Share for any particular Project, LIP will provide Metro with regular updates regarding Project construction and completion. LIP will notify Metro of any events during construction that materially affect the Project, including (a) significant extensions of the Project schedule, (b) significant increases to the Project budget, (c) any notices of default issued by LIP or other Project lenders, or (d) any other changes that impact the quality or nature of the Project described in the Final Approval process. If any such material events occur during Project construction, LIP will provide Metro with any additional information Metro reasonably requests related to such events. In addition to providing the general Project updates and information

described above, LIP will provide Metro with the documents listed on the attached **Exhibit D** at the Project milestones referenced therein.

6.2. Funding Recognition. LIP will publicly recognize Metro and the Bond Measure in any publications, media presentations, or other presentations relating to or describing Projects receiving Bond Proceeds. LIP will coordinate with Metro in selecting the date and time for any event recognizing, celebrating or commemorating any Project ground-breaking, completion, ribbon cutting or opening, and provide Metro an opportunity to participate. LIP will ensure that the Bond Measure is officially recognized as a funding source at any such event, and will provide a speaking opportunity for the Metro elected official representing the district in which the Project is located, if such opportunities are provided to LIP or other public officials.

**7. Administrative Funding.** Subject to the terms and conditions of this Agreement, and the requirements and restrictions set forth in both the Work Plan and the Bond Measure, Metro will provide LIP the Administrative Share. Within thirty (30) days of the Effective Date, Metro will disburse to LIP its Administrative Share in accordance with the schedule set forth on Exhibit B attached to this Agreement. Interest earnings on the Administrative Share while held by LIP may be retained by LIP, provided such interest is used for affordable housing, residential services, or supportive services for residents of affordable housing. Metro's obligation to distribute the Administrative Share is conditioned on LIP making reasonable progress towards its Unit Production Targets, as reasonably determined by Metro in accordance with the timeline set forth on the attached Exhibit B.

**8. General Obligation Bonds.** All Bond Proceeds disbursed to LIP pursuant to this Agreement (including both the Eligible Share and the Administrative Share) are 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. LIP covenants and agrees that it will take no actions that would adversely affect 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. LIP further covenants and agrees that (a) all Bond Proceeds disbursed hereunder will be used only to pay for or reimburse costs that are of a type that are properly chargeable to a Capital Costs (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; and (b) within ten (10) days of the event, LIP



will disclose to Metro any events that are required to be included in Metro's continuing disclosure obligations as the issuer of the general obligation bonds. If LIP breaches the foregoing covenants, LIP 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 Project Funds.

## **9. LIP Required Annual Reporting**

9.1. Local Implementation Strategy Progress Reports. By the end of each calendar year of the Term, or until LIP has fully expended its Eligible Share, LIP will provide a report to Metro summarizing its LIS progress and outcomes (the "LIS Annual Progress Report"). LIP will create the LIS Annual Progress Report using a template provided by Metro, which template Metro will develop with input from all participating local government partners receiving Bond Proceeds. The Oversight Committee will review the LIS Annual Progress Report and may recommend changes to the LIS to achieve the Unit Production Targets and to better align the LIS with the Work Plan. LIP agrees to participate fully in such annual review process; provided, however, the LIS may be revised or amended only upon written agreement by both LIP and Metro. Failure by LIP to agree to a proposed amendment will not constitute an event of default.

9.2. Financial Eligible Share Reports. Beginning with Metro's first disbursement of any portion of the Eligible Share to LIP for a Project, and continuing each year thereafter, on or before September 15 of each year during the Term until Unit Targets are completed and/or all Eligible Share is disbursed, LIP will provide an annual financial report to Metro containing (a) an itemized list of LIP's expenditure of Project Funds (and interest earnings thereon) through the end of the applicable fiscal year and (b) a certification from LIP to Metro that the Eligible Share was used only to pay for or Capital Costs.

9.3. Administrative Share Reports. On or before September 15 of each year during the Term, LIP will provide an annual report to Metro containing (a) an itemized list of LIP's expenditure of its Administrative Share (and any investment earnings thereon) through the end of the prior fiscal year detailing each entity LIP paid any portion of the Administrative Share and (b) a certification from LIP to Metro that the Administrative Share was used only to pay for or Capital Costs.

**10. Audits, Inspections and Retention of Records.** LIP will keep proper books of account and records on all activities associated with the expenditure of all funds disbursed by Metro under this Agreement. LIP will maintain these books of account and records in accordance with generally

accepted accounting principles through the date that is three (3) years after the anticipated maturity date of the Bonds or the anticipated maturity date of any obligations issued by Metro to refund the Bonds. Metro expects the Bonds will be outstanding until approximately May of 2039. LIP will permit Metro and its duly authorized representatives, upon prior written notice, to inspect books and records, 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 Bond Proceeds 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

#### **11. Term; Termination; Default Remedies; Dispute Resolution**

11.1. The term of this Agreement commences on the Effective Date and terminates on ten years after the Effective Date (the "Term"). The expectation of the parties is that LIP will spend its Eligible Share within seven (7) years after the Effective Date and that all Projects will be completed within the Term of this Agreement. Metro will have no obligation to disburse any remaining portion of LIP's Eligible Share or Administrative Share after the expiration of the Term. The repayment obligations and indemnities set forth in Sections 4, 5, 8 and 14 survive the expiration or earlier termination of this Agreement.

11.2. Metro and LIP 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 only upon the mutual, written termination agreement signed by both Metro and LIP.

11.3. If Metro reasonably believes LIP is not spending its Eligible Share according to the terms herein or otherwise has otherwise failed to comply with the terms of this Agreement, in addition to any other rights and remedies set forth herein or available at law, or in equity, Metro has the right to immediately withhold or suspend future distributions of Eligible Share and Administrative Share. In such an event Metro will provide LIP with written notice of such determination and will thereafter proceed with the dispute resolution provisions set forth below in Section 11.4.

11.4. Metro and LIP will negotiate in good faith to resolve any dispute arising out of this Agreement. Subject to the provisions set forth below, Metro or LIP may terminate this Agreement during the term if it reasonably determines the other party has failed to comply with any material provision of this Agreement and is therefore in default. Before terminating this Agreement in accordance with this section, the terminating party will provide the other party with

written notice that describes the evidence of default and include a description of the steps needed to cure the default. From the date that such notice of default is received, the defaulting party will have 30 days to cure the default. If the default is of such a nature that it cannot reasonably be cured within 30 days, the defaulting party will have such additional time as required to cure the default, as long as it is acting in a reasonable manner and in good faith to cure the default. If the parties are unable to resolve any dispute within thirty (30) days of after receipt of a written notice of default or such additional time as may be needed to reasonably cure the default, the parties will attempt to settle any dispute through mediation. The parties shall attempt to agree on a single mediator. The cost of mediation will be shared equally. If the parties agree on a mediator, the mediation must be held within 60 days of selection of the mediator unless the parties otherwise agree. If the parties cannot agree on a mediator, or the matter is not settled during mediation, the parties will have all other remedies available at law or in equity.

## **12. Notices and Parties' Representatives**

12.1. Any notices permitted or required by this Agreement will be addressed to the other party's representative(s) designated in this section and will be deemed provided (a) on the date they are personally delivered, (b) on the date they are sent via electronic communication, 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.

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Chris Hartye

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## **13. Compliance with Law**

13.1. LIP will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to its investment and expenditure of the Bond Proceeds.

13.2. LIP further recognizes that investing Bond Proceeds (through either a loan or grant) could result in a Project being a "public works" for purposes of Oregon's prevailing wage

rate law, ORS 279C.800 to 279C.870, as it may be amended from time to time. LIP will be solely responsible for ensuring that all Projects receiving Bond Proceeds comply with prevailing wage rate law, as applicable.

13.3. 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 LIP receiving funds pursuant to this Agreement.

#### **14. Insurance; Indemnification; Limitation on Liability**

14.1. Metro and LIP will self-insure or maintain general liability insurance and workers compensation insurance coverage. Each party is responsible for the wages and benefits of its respective employees performing any work or services related to this Agreement. LIP will add Metro as an additional insured to all commercial general, excess and umbrella liability policies. LIP will provide a certificate of insurance listing Metro as a certificate holder within 30 days of execution of this Agreement.

14.2. Subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, LIP will indemnify, defend, and hold harmless Metro, its elected officers and employees, 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) suffered or incurred as a result of third-party claims arising out of LIP's performance of this Agreement or resulting in whole or in part from any act, omission, negligence, fault or violation of law by LIP, its officers, employees, agents, and contractors. This indemnity includes any third-party claims related to the development, construction, operation, repair, or maintenance of Affordable Housing Projects. This indemnity provision does not apply to third-party claims resulting from the sole negligence or willful misconduct of Metro.

14.3. In no event will either party be liable to the other for, and each party releases the other from, any liability for special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement, however caused, whether or not arising from a party's sole, joint or concurrent negligence.

**15. Oregon Law, Dispute Resolution, and Forum.** This Agreement is to be construed according to the laws of the State of Oregon. Any litigation between Metro and LIP arising under this Agreement will occur, if in the state courts, in the Multnomah County Circuit Court, and if in the Federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

**16. No Third Party Beneficiaries.** LIP 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.

**17. Relationship of Parties.** Nothing in this Agreement nor any acts of the parties hereunder will 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 LIP and Metro. Furthermore, Metro will not be considered the owner, contractor or the developer of any Project funded with Bond Proceeds. This Agreement is not intended to be a contract that provides for the development or construction of any Project, 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 LIP to which Metro is not a party. LIP waives and releases Metro from any claims and actions related to the construction, operation, repair, or maintenance of any Affordable Housing Projects. If LIP obtains an indemnification agreement from any third-party developer or general contractor receiving Bond Proceeds under this Agreement, LIP will contractually require such party to indemnify Metro to the same extent as LIP.

**18. 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 LIP 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.

**19. 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.

**20. 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.

**21. No Attorney Fees.** Except as otherwise set forth in Section 14 of this Agreement, 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.

**22. 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.

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

**Metro**

**LOCAL IMPLEMENTATION PARTNER**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



# Local Implementation Strategy

For the Metro Regional Affordable Housing Bond

September 2019



**Hillsboro Local Implementation Strategy (LIS)**  
**Metro Affordable Housing Bond**

I.	Introduction	2-4
II.	LIS Development – Phase I Community Engagement	4-6
III.	Implementation Timeline and LIS Review	6
IV.	Organizational Plan for Implementation	6-7
V.	Leveraging Other Affordable Housing Resources	7-8
VI.	Project Selection Process	8-10
VII.	Project Selection Criteria	10-14
VIII.	Project Implementation	14-17
IX.	Ongoing Community Engagement – Phase II	17-18
X.	Reporting	18
XI.	Exhibit I – Community Engagement Report	
XII.	Exhibit II – Example Project Portfolio	

## **I. Introduction**

Hillsboro is now home to nearly 102,000 residents, making it the largest city in Washington County and the fifth largest city in Oregon. Hillsboro residents are racially and ethnically diverse, with over 40% of the total population represented by communities of color. Hillsboro is often cited as the “economic engine” of the region, with high tech manufacturing and associated industries playing a prominent role in providing thousands of high wage jobs. Yet Hillsboro also has several of the lowest-income census tracts in Oregon and over 20% of renters are severely cost burdened. Even with an existing inventory of over 2,500 regulated affordable housing units, there is a clear need for more affordable housing in Hillsboro, particularly for our lowest-income community members.

This Local Implementation Strategy (LIS) will guide the efforts of the City of Hillsboro as it works to create affordable housing using the Metro Affordable Housing Bond. Hillsboro welcomes the opportunity to be an implementing jurisdiction in this program and expects that these resources will play a critical role in meeting a range of important housing needs in the community.

### **Principles of Autonomy & Collaboration for Participating Jurisdictions in Washington County**

Three jurisdictions in Washington County will participate in implementation of the Metro Affordable Housing Bond—Washington County, the City of Hillsboro and the City of Beaverton. While each will have a separate LIS, the jurisdictions have agreed to several principles and practices with respect to the development and operation of their implementation strategies.

- The three jurisdictions will receive an allocation of bond resources based on the share of bond revenue generated by each of the three jurisdictions.
- Each jurisdiction will have autonomy in project selection, commitment of bond resources, and oversight of bond funded projects. The jurisdictions may choose to collaborate on specific projects that will serve their individual as well as collective community needs. This may result in actual expenditure of the bond across the three jurisdictions in a different blend than envisioned at the outset.
- Recognizing that many community partners serve the larger Washington County area, the three implementing jurisdictions will collaborate on community outreach efforts and on developing partnerships that will help to ensure the success of all bond projects in Washington County.

### **Metro Affordable Housing Bond Resources and Framework Targets**

This LIS focuses on the City of Hillsboro’s efforts to deliver newly developed or acquired and rehabilitated affordable housing in Hillsboro with use of revenues from the Metro Affordable Housing Bond. It was formulated based on the input and needs of Hillsboro community members, policy goals of the Hillsboro City Council, as well as being guided by Metro’s Affordable Housing Bond Program Work Plan, approved by Metro Council in January 2019. The

Metro Bond Work Plan sets the regional goal of creating 3,900 regulated affordable units - 1,600 of which are for households earning 30% or less of the Area Median Income (AMI) and 1,950 housing units with two or more bedrooms.

From the regional total, **\$40,657,081** in bond revenues is dedicated to Hillsboro based on the percentage of assessed value (AV) generated by Hillsboro households and property owners. The overall goal for Hillsboro is to support at least **284 units of affordable housing** in the community with use of the bond revenues. These may be newly-built units or preservation of existing units that are at risk of rapidly rising rents. While many of these units are expected to provide rental housing, affordable homeownership projects may also be supported with the bond resources.

Recognizing that our lowest income neighbors have the greatest challenges in securing affordable housing, and consistent with the Metro Bond Framework, at least **117** of the Bond-funded units produced will be affordable for households with income at or **below 30% of area median income**. These units may serve people with special needs, people who earn low wages or live on fixed incomes. As least **43** of the deeply affordable units will be supported with rental assistance provided by the Housing Authority of Washington County, targeting the most fragile households. Hillsboro will encourage affordable housing developers, owners and operators to work with social service agencies and other community partners to link supportive services to the affordable housing to ensure that residents are stable and secure.

Because the need for affordable housing crosses many income levels, and because serving moderate-income households can effectively provide a source of cross subsidization for lower income households, Hillsboro may also explore options to include units appropriate for households with incomes from **61% to 80% AMI**. No more than **29** Bond-financed units at this income level (10% of regional target total) will be counted toward the regional targets, as outlined in the Metro Bond Framework.

The private rental housing market typically concentrates on producing smaller units, but the need for affordable housing crosses a range of household sizes. Particularly in Hillsboro where overcrowding is a key problem expressed by low-income communities of color and multigenerational households, the need for affordable housing with larger bedroom sizes is crucial. The Metro Bond Framework has set a goal that aligns with this local need - half of the units developed under the bond program must include two or more bedrooms. For Hillsboro, this means that at least **142 units** produced with the help of Bond funds will include **two or more bedrooms**.

The table on the following page outlines the unit production targets for Hillsboro to be produced with use of Metro Affordable Housing Bond revenues as per this Local Implementation Strategy, the Metro Affordable Housing Bond Framework, and Work Plan.

<b>Hillsboro Unit Production Targets</b>	
Total Affordable Units	284
Minimum number of 30% AMI Units (43 units with Project Based Section 8 rent assistance)	117
Maximum number of 60%-80% AMI Units	29
Minimum number of 2 Bedroom & Larger Affordable Units	142

These unit production targets are anticipated to be achieved through a portfolio of projects. Hillsboro expects that the Bond funds will provide support for approximately **two to five** affordable housing projects.

### **Advancing Racial Equity**

As noted previously, Hillsboro is among the most racially diverse cities in Oregon, with two of every five residents identifying as a person of color. Notably, 50% of low-income residents and 65% of individuals living below the poverty line are people of color. The Metro Council and the City of Hillsboro have made advancing racial equity a priority for implementation of the Affordable Housing Bond. Decades of housing policy from the federal to local level have contributed to disparate outcomes for communities of color in housing. As a result, people of color struggle with housing cost burdens, displacement and homelessness. Local studies have indicated that Latino, African American, Vietnamese, Filipino and Slavic communities in Hillsboro have higher percentages of severe cost burdening, paying over half of household monthly incomes on housing expenses. The implementation of the Affordable Housing Bond provides an opportunity to work toward addressing these inequities and striving to better meet the needs of historically marginalized communities.

Efforts and opportunities to address racial equity occur at many points in the implementation of the Affordable Housing Bond. The selection of projects, inclusion of minority and women-owned contractors in building housing, the formation of culturally specific partnerships for outreach and services, accessible tenant selection processes, and ongoing reporting of outcomes all provide opportunities to advance racial equity. Specific implementation strategies that Hillsboro will employ to advance racial equity are discussed in various sections throughout this plan.

## **II. Local Implementation Strategy Development – Phase I Community Engagement**

Meaningful community engagement, especially with communities of color and marginalized communities, serves as the basis of the Local Implementation Strategy. Washington County, Hillsboro and Beaverton jointly developed and implemented an outreach plan that focused on regional and local nonprofit partners as well as localized outreach to residents within communities. The collaborative work of the three jurisdictions resulted in hearing from over 500 community members and over 50 agencies, which provided perspectives on housing needs across Washington County that targeted racially-diverse, low-income and special needs populations.

As nearly one of every four Hillsboro residents identifies as Hispanic and/or Latino, the City of Hillsboro focused its efforts on community listening sessions with low-income Latino community members to discuss affordable housing needs and preferences. These sessions were conducted entirely in Spanish with translation available for English speakers. Two sessions were held with residents of Bienestar affordable/farmworker housing properties. The first was comprised of approximately 20 resident leaders in the *Promotores* program who provided feedback and distributed a housing survey to residents of multiple sites. This survey resulted in input from over 200 Bienestar residents. A second follow up session was held with approximately 35 Bienestar residents from various properties both in and outside of Hillsboro.

Themes and feedback from the surveys and sessions included the following:

- Overcrowding is a problem in Hillsboro, especially with low-income Latinos - there is a real need for family-sized affordable housing units;
- New affordable housing is preferred to be located within close access to public transit, health services, child care, shopping, schools, and parks;
- Challenges in affordable housing access include long wait lists, rent amounts, credit scores, legal immigration status, and application requirements (such as social security numbers);
- There is a strong interest in affordable homeownership, especially for families with steady employment and incomes who want to build wealth/equity and take pride in ownership.
- Challenges to being successful in affordable rental housing include rent increases, other cost of living increases and property rules that are too strict, especially for households with children.
- Many community members find out about affordable housing opportunities largely by word of mouth through family, friends and neighbors, and also through community organizations like churches and service providers.

Another affordable housing listening session was conducted with Latino parents from the Hillsboro School District with approximately a dozen total participating attendees. The feedback themes were similar to those listed above but also included a clear preference for family-friendly housing types, such as single-family homes, townhomes and duplexes and in geographic locations that provide ample opportunities and proximity to MAX transit, parks, family services and schools. The performance or reputation of individual schools was one key driver for the geographic preference of housing at this session.

The feedback provided by all of these key stakeholders, focused on low-income communities of color, directly informs the racial equity components of this LIS relative to geographic site and

project selection, affirmative and culturally competent marketing and services, and in approaches to low barrier screening criteria.

As mentioned previously, community engagement also included discussions with homeless and special needs communities, multiple community-based organizations, service providers, non-profit and for-profit developers and other groups. The attached Exhibit I details this community engagement activity and provides summary themes, which have been incorporated to develop this LIS.

### **III. Implementation Timeline and LIS Review**

Implementation of Bond-funded projects is expected to occur over a period of **five to seven years**. This timeline will allow for the identification of sites and acquisition as needed, securing needed resources for capital and services, developing partnerships with developers and service providers, and completing construction.

During this period, community needs and opportunities may change. New census data will become available, new community planning efforts will be initiated or completed (for example, the development of Washington County's 2020-2024 Consolidated Plan in which Hillsboro is a participant), and new resources or opportunities may become available while other resources or opportunities may not materialize as anticipated. In addition, certain framework goals may be easily fulfilled while others may prove more challenging. Because of the dynamic nature of this work, Hillsboro proposes to periodically review, and potentially reset, this Local Implementation Strategy.

Hillsboro proposes to monitor and adjust this LIS based on the commitment and/or expenditure of bond resources to specific projects. Hillsboro will use a tracking worksheet to monitor bond investments made into individual projects, the project's yield of unit production targets, and the overall portfolio of unit production relative to bond investments. This will provide an ongoing, up-to-date evaluation to guide selection of subsequent projects and keep resource investments on track with unit production. Another area of monitoring and review will be racial equity outcomes – namely, the performance of each project and the overall project portfolio in achieving the racial equity components contained in this LIS. If these ongoing reviews indicate that a modification to the LIS is advisable, the amendment process will include community outreach and engagement, review and amendment by the Hillsboro City Council and submittal to Metro for review and approval.

### **IV. Organizational Plan for Implementation**

Hillsboro will use a combination of staff and consultants to administer this Local Implementation Strategy. In-house staff will be responsible for community engagement and outreach, project selection, project documentation and funding processes, overall program implementation, monitoring and reporting. Hillsboro may engage consultants with expertise in financial packaging of affordable housing to review proposed projects during the selection and

commitment phases. Similarly, Hillsboro may engage consultants or partner with other project funders to leverage their expertise in construction management to help oversee project development. Some aspects of implementation will require the development of systems that are new to Hillsboro or that are not efficient for the handful of projects expected to be funded with Bond revenues. In these situations, Hillsboro may work with consultants and/or other jurisdictions for various components of project implementation.

Metro has committed a total of \$856,000 available in administrative funds over five-seven years to support Hillsboro's bond implementation. Initially, Hillsboro anticipates that these funds will support work related to project implementation (for example, contracting for underwriting and compliance).

#### **V. Leveraging Other Affordable Housing Resources**

While the Metro Bond resources are substantial, in order to accomplish the unit targets of the Bond Framework, the funds will need to be blended with other public and private funding sources. There are a number of principles that will guide our efforts to leverage the Bond funds:

- **Maximize the use of non-competitive resources.** The 4% LIHTC program is available on a non-competitive basis to provide equity for affordable housing development. This program is especially useful for larger projects or scattered site projects that can be bundled to achieve the scale desired by equity investors. Developing projects in Hillsboro's Qualified Census Tracts (QCTs) or Difficult to Develop Areas (DDAs) can maximize the usefulness of the 4% tax credits.
- **Maximize use of private resources.** Many projects will generate sufficient rental income to be able to make debt service payments on loans from private banks or other conventional financing. While ensuring that projects have appropriate operating budgets and reserves, private debt should be secured for projects whenever feasible. In the case of affordable homeownership projects, this could include home mortgages.
- **Maximize local resources.** A variety of local resources may be available to support capital and operating expenses:
  - **Project based rental assistance.** The Housing Authority of Washington County (HAWC) has committed project-based Section 8 assistance for 43 units to Hillsboro Bond projects. This assistance will allow residents to pay based on their household income, while the project will receive a set rental income based on their Section 8 payment standard. The City, in partnership with HAWC, will allocate available project-based Section 8 assistance in an approach that works to achieve the goals of this Local Implementation Strategy and Metro Bond Framework.

- **Affordable Housing Property tax exemption.** The City offers property tax exemption to developer/owners that are non-profits under the provisions of ORS 307.540.
- **Publicly owned land.** The City will prioritize projects that are developed on City-owned sites. The ability of the City to donate some portion of the value of the sites may vary, but discounted values would likely be available.
- **Seek other existing affordable housing resources (Federal, State and County resources).** The City recognizes that despite the availability of Bond funding, private equity and applicable resources from the City, projects may have financing gaps that are best filled with other traditional affordable housing program resources. Sources such as HOME funds, Oregon Affordable Housing Tax Credits, Local Innovation and Fast Track (LIFT) funds and other sources may be needed to complete financing packages for specific projects. Hillsboro and project developers will work with other funders in a transparent way to find the most effective and efficient way to bring these resources to Bond funded housing projects.
- **Complement existing regulated housing and support pipeline of other affordable housing projects.** This LIS and associated bond-funded projects are anticipated to help complement Hillsboro's base of existing affordable housing through new construction of projects especially in neighborhoods that do not currently have significant amounts of regulated affordable housing. While much of Hillsboro's efforts during the implementation of the Affordable Housing Bond will be focused on moving the pipeline of Bond funded projects forward, the ongoing availability of other Federal and State affordable housing resources will mean that there is a likelihood of other projects moving forward during the same timeframe. The City will monitor the pipeline of projects being proposed and funded in Hillsboro and will collaborate with developers to identify the most appropriate funding packages and other support that can be provided to those projects.

## **VI. Project Selection Process**

Hillsboro will work in partnership with developers/property owners that have demonstrated experience, skills and success providing and operating affordable housing. The City of Hillsboro itself does not intend to be a developer, owner, or operator of affordable housing. The primary role of the City in Affordable Housing Bond implementation will be to provide financing to private and nonprofit development partners for affordable housing projects through use of the allocated Bond funds. As indicated, the City expects that the Bond funds may provide support for approximately **two to five affordable housing projects**. The attached Exhibit 2 outlines a hypothetical Bond-funded portfolio of three projects that, in combination, achieves Hillsboro's unit production targets. The actual number of projects may vary.



The project selection process will be made through public and open solicitations via Notice of Funding Availability (NOFA), Requests for Qualifications (RFQs), and Requests for Proposals (RFPs). An initial City RFP/NOFA process is anticipated in the first quarter of 2020. Unsolicited proposals that conform to this Local Implementation Strategy and the Metro Bond Framework and Work Plan may also be considered as described on Page 10 under the heading “Sites Proposed by Developers.” The City of Hillsboro will create an Affordable Housing Project Advisory Committee that will provide feedback to staff on the solicitation and selection of affordable housing projects, with particular emphasis on reviewing all projects proposed to include Bond funds. The Project Advisory Committee will review proposed projects before consideration of approval by Hillsboro City Council.

Each solicitation and project selection process will include a set of expectations of developers/owners to ensure that selected projects align with this Local Implementation Strategy and help achieve both the Framework goals and racial equity outcomes. These requirements include but are not limited to:

- a 60-year affordability covenant for new construction and a 30-year covenant for acquired and rehabilitated projects
- the inclusion of Minority-owned, Women-owned, and Emerging Small Business (MWESB) contractor participation in the development process
- the use of best practice marketing, engagement and outreach to communities of color
- low-barrier tenant selection criteria.

Other requirements are described in the Project Selection Criteria and Project Implementation sections below.

### **Sites Identified by the City**

The City affordable housing team is exploring sites that the City already owns, controls or may purchase that have potential for bond-financed affordable housing projects. The City will prioritize such sites if they are viable for affordable housing development and will help to fulfill Local Implementation Strategy goals.

The City will take into consideration:

- the significant beneficial leverage of already controlled/owned land;
- high opportunity areas, defined by access to transit, schools, services and other amenities
- opportunities to meet community development goals, LIS and Bond Framework goals, and/or to develop beneficial service partnerships;
- opportunities to use 4% or 9% Low Income Housing Tax Credits (LIHTC) resources, especially in Difficult to Develop Areas, Qualified Census Tracts and Opportunity Zones.

Should the City identify, acquire or make available City-controlled development sites under this Local Implementation Strategy with associated Bond resources, the developer/owner of such sites will be chosen based on the competitive project selection processes described herein. As previously indicated, an initial City RFP/NOFA process is anticipated by the first quarter of 2020 related to this category.

### **Sites Identified by Metro**

The allocation of Affordable Housing Bond funds includes an allocation for land acquisitions carried out by Metro rather than by the implementing jurisdictions. Metro has allocated an estimated \$21 million for acquisition of sites in Washington County. While it is uncertain whether any such sites will be in Hillsboro, the City is committed to working closely with Metro should such sites be identified and agreed upon by both parties. If such sites are identified and meet LIS criteria, Hillsboro would plan to select a developer/owner and/or project through a competitive project selection process.

### **Sites Proposed by Developers**

As described, Hillsboro will conduct periodic NOFA, RFQ or RFP processes to competitively select projects with sites proposed or controlled by developers for funding under the Bond program. The City of Hillsboro may also consider unsolicited proposals from developers on a rolling basis for projects with potential for use of bond funds in some circumstances. In consideration of such proposals, the City expects that affordable housing developers will have site control on a proposed property through outright ownership, a long-term lease, or at a minimum, through an option to purchase the property through a purchase and sale agreement or other documentation. In addition, any unsolicited proposals will be expected to demonstrate the need for expediency in market or development conditions or other unique circumstances. Examples would include land or building acquisition opportunities subject to active market competition and/or for qualifying affordable homeownership development opportunities. Developers should be aware that, depending on progress against the Bond framework, such proposals may need to achieve specific targets for income levels, unit types, geographic area, racial equity, or other characteristics. To ensure transparency, the City will document findings and justifications for any project selection or endorsement awarded through an unsolicited proposal.

Developer/owners are encouraged to work closely with the City to ensure that their proposals are responsive to the evolving needs of the Hillsboro's Local Implementation Strategy and comply with all LIS, Bond Framework and Work Plan requirements.

## **VII. Project Selection Criteria**

### **Metro Framework Unit Production Targets**

Hillsboro will take a number of factors into consideration in the selection of Housing Bond-funded projects. The first consideration will be how each project contributes to the

accomplishment of the unit production targets of the Metro Bond Framework (outlined on page 4). The City does not expect that each project will reflect the exact unit ratios expressed by these targets, but instead that the overall portfolio of funded projects in Hillsboro will achieve this mix.

The ratio of unit bedroom sizes will reflect the characteristics of the target population of specific projects, and that in turn should reflect characteristics of the site in terms of suitability to individuals, smaller or larger families. The City does expect that most projects will include units that are two bedroom or larger in order to reflect local need and the Bond Framework production target requirements.

The City also anticipates that all multifamily rental projects will include some units with rents at or below 30% AMI. In some cases, projects will be targeted to low wage earners or people on fixed-income, while others may be targeted to people with disabilities or other special needs, or people who have experienced homelessness. Some projects may include higher concentrations of 30% units so long as there is an identified funding source for the corresponding supportive services needed.

Hillsboro anticipates including 60%-80% AMI units for mixed-income projects when appropriate for the project and depending on the project's place in the bond-funded portfolio. As mentioned previously, inclusion of these units may also help to cross subsidize lower income units or reduce the amount of Bond financing needed for a given mixed-income project. Hillsboro also hopes to see mixed-income and/or mixed-use projects where only a portion of the project is supported with Bond funds.

### **Furthering Hillsboro's Affordable Housing Goals**

In addition to fulfilling the Metro Framework, the City will work to align the affordable housing developed with Bond revenues to support a number of local goals and policies. These goals and policies are enumerated primarily in the Hillsboro Affordable Housing Policy and Action Plan, the Hillsboro Comprehensive Plan, as well as in this Local Implementation Strategy. Each of these policies and strategies is based on feedback provided through extensive community engagement.

Consistent with these plans and community needs, the City of Hillsboro:

- Will focus its Bond-financed affordable housing on new construction of affordable rental projects especially in neighborhoods that do not currently have significant amounts of regulated affordable housing. This will promote the dispersal of new affordable housing to help create mixed-income neighborhoods and communities.
- May consider new construction as well as acquisition/rehabilitation projects to prevent rent increases and displacement in low-income areas, especially in the downtown core area.

- Will prioritize projects in geographic locations with proximate access to public transit, schools, parks, shopping options, health care and other services as per the needs and preferences expressed by low-income communities engaged through outreach.
- Will consider investing bond resources in the development of affordable homeownership units with consideration given to how the proposed project adheres to this LIS and contributes to the accomplishment of the unit production targets of the Metro Bond Framework.

## **Racial Equity**

Hillsboro's approach to racial equity in project selection will take into consideration factors such as:

- Increasing regulated affordable housing opportunities in areas with existing underserved diverse populations, especially in areas that may be subject to displacement.
- Providing new affordable housing in high opportunity neighborhoods and sites. This would include sites that have good access to public transit, jobs, quality schools, commercial services, parks & open space, etc.
- Supporting project teams that have a proven track record of:
  - Outreach, engagement and ensuring participation of minority and women-owned contractors in predevelopment, construction, and ongoing maintenance and operations of the building
  - Engaging targeted and/or marginalized communities including communities of color as part of its leasing process
  - Creating an inclusive tenant screening criteria process that minimizes barriers to communities of color and other underserved groups
  - Providing culturally specific resources and services. Hillsboro recognizes that culturally specific programs can achieve strong outcomes for diverse groups in the community.

Hillsboro will prioritize projects addressing historical racism and lack of housing access experienced by communities of color, whether that is represented by projects sponsored by culturally-specific organizations, projects in which culturally-specific organizations have a meaningful role in project design, resident services and operations, or when project sponsors provide proof of their ability to serve communities of color.

## **Connection to Resident/Tenant Services**

Hillsboro expects that some level of Resident Service Coordination will be provided at all projects, appropriate to the level of need of the target population. Resident Services will generally focus on eviction prevention, helping residents access mainstream services for which they may be eligible, and community building activities.

Projects serving high needs populations will require more robust supportive services to ensure resident stability and positive outcomes. While the City is not a provider or funder of supportive services, it is available in partnership with Washington County, to help connect developer/owners to public and private service providers in the community to create needed partnerships. Hillsboro will evaluate each project's target population and service plan to help ensure that it is appropriate and durable.

### **Project Cost/Leveraging Funds**

The City plans to use Bond funds to support a portfolio of projects that provide the best return on investment in the form of long-term, sustainable affordable housing. These projects will be characterized by quality design and durable construction. Wherever possible, they will use cost effective sustainable building measures to create efficient use of energy and water and select materials to create healthy living environments. They will be well-aligned with the needs of the target households in terms of space, amenities and service requirements, and will be valuable assets in the communities in which they are located.

The blend of funding sources will have an impact on both hard and soft costs. Hard costs will be impacted by development standards of investors, lenders and other public funders. Soft costs will vary with requirements for specific legal, accounting, reserve requirements, and fees. Leverage will also be impacted by the service needs of the residents.

The City will evaluate all proposed projects to ensure that the costs are reasonable and appropriate to the specific project, focusing on the amount of Bond funds requested relative to the housing product(s) delivered. This evaluation may consider:

- Scale appropriate to the target population and income levels of tenants.
- Scale appropriate to the size of the units, including number of bedrooms.
- Scale appropriate to the neighborhood in which the project is located.
- Costs associated with mixed-use or mixed-income projects.
- Quality of construction materials.
- Costs associated with service needs of the target population.
- Resident amenities and other services provided.
- Project-related public infrastructure costs.
- Reasonable fees and reserves.

The City recognizes that in order to accomplish the overall unit production target, it will need to have an average Housing Bond expenditure per unit of **approximately \$143,000**. Hillsboro expects that some projects may receive significantly less Bond funds than this amount, while

others may receive significantly more, depending in part on the factors listed above. Hillsboro will monitor the overall pipeline of projects to ensure that the target number of units will be achieved.

### **Capacity/Readiness to Proceed**

Hillsboro recognizes that the development of affordable housing differs in many ways from market rate housing or other real estate development. Hillsboro will seek to partner with non-profit, for-profit, or governmental organizations that have demonstrated skills as affordable housing developer/owners. Expertise with the framework target unit types and with the specific population proposed by a project will also be considered.

Timely implementation of the Housing Bond is critically important. In its project selection process, Hillsboro will prioritize projects that have a clear path to timely completion. This may include a priority for projects that have appropriate zoning, have secured much or all of the other financing sources, have secured needed service partnerships, and have a clear and achievable racial equity plan. While Hillsboro may not make a funding commitment until projects meet “ready to proceed” and all other applicable criteria, Hillsboro suggests that interested developers begin conversations with the City at the earliest stages of pre-development to ensure that project programming aligns with the Implementation Strategy.

## **VIII. Project Implementation**

### **Review & Approval of Projects**

Bond funded projects will go through a multi-stage review and approval process as follows:

- Hillsboro concept endorsement. To be considered for City of Hillsboro concept endorsement, a project must at a minimum have site control, a preliminary development plan, preliminary estimate of total development costs, preliminary estimate of needed Housing Bond funds, an identified development team and a preliminary racial equity plan. Hillsboro will process and determine recommendations for concept endorsements utilizing the Affordable Housing Project Advisory Committee and will present recommended projects to the City Council. If Council approves the concept endorsement, staff will submit the project to Metro for concept endorsement.
- Metro concept endorsement. Hillsboro staff, in conjunction with Metro staff, will present the project to Metro for endorsement by the Metro COO. Metro will review the project for conformance to the adopted Local Implementation Strategy and Bond Framework.
- Hillsboro project approval & funding authorization. As the project completes due diligence and moves to financial closing, Hillsboro will consider project approval by presenting final project details to the Affordable Housing Project Advisory Committee for final review and recommendation. These recommendations will be presented to

City Council for formal action appropriate to the project (for example, authorizing a Disposition and Development Agreement (DDA), funding commitment, etc.)

- Metro project approval & funding authorization. Hillsboro staff, in conjunction with Metro staff, will present the project to Metro for final approval and funding authorization.
- Release of Funds. Once a project has received approval by the Hillsboro City Council and Metro, funds will be released to the City of Hillsboro and disbursed to the project in accordance with the provisions of the project documents.

## **Project Closing**

- Metro-Approved Regulatory Agreement. All projects will be required to execute a Metro-approved Regulatory Agreement that acknowledges the use of Metro Housing Bond funds and the restrictions associated with the use of such funds. The Regulatory Agreement shall be recorded against the project at or prior to closing.
- Period of Affordability. The Regulatory Agreement will generally specify a 60-year period of affordability for new construction projects. For acquisition projects that are more than 10 years old, the City may consider a shorter period of affordability, but no less than 30 years. The Regulatory Agreement will provide a first right of refusal for qualified nonprofit organizations or government entities to acquire the project upon expiration of the affordability period.
- Accomplishment of Framework Targets. The Regulatory Agreement will also specify the level of affordability of the units and the unit bedroom sizes of the project.
- Reporting Requirements & Monitoring During Operations. The Regulatory Agreement or similar agreement will also provide requirements for the developer or owner/operator to periodically provide information relating to the project's financial performance, physical condition, occupancy, tenant income verification, and voluntarily collected tenant demographics. The agreement calling for these reports shall provide that reports will be made for the benefit of both Metro and the City of Hillsboro. The agreement shall also provide physical access to the property when requested by Metro, the City of Hillsboro, or other project financing partners.
- Jurisdiction Documents. The City of Hillsboro will require a variety of other documents relating to the project. These may include:
  - Disposition & Development Agreements. In the case of properties controlled by the City of Hillsboro, the City will develop agreements relating to the transfer of property to the developer/owner and associated development commitments.
  - Hillsboro will develop documents relating to the form of investment of Bond Funds. These may vary depending on projected cash flow of different projects and may take the form of cash flow dependent loans or grants. In general, Hillsboro will support the allocation of modest amounts of program income to restricted reserve accounts dedicated first to the provision of Resident Services.

Projects that are expected to have more significant program income may have requirements for cash flow dependent distributions to the City.

- Hillsboro will specify requirements relating to implementation of Racial Equity Strategies. Strategies will be developed for each project, and requirements will be documented in agreements with the City. This will include:

- **MWESB Contracting.** Project sponsors will be requested to achieve an aspirational goal of 20% of total development costs for contracts to certified minority, women, and emerging small businesses. Specific NOFAs, RFQs, or RFPs may have additional goals and/or requirements. Project sponsors will be required to provide documentation of contracting efforts and results.
- **Workforce Participation.** Hillsboro is interested in encouraging participation in project workforce hours by minorities, women and disabled veterans. Hillsboro will work with Metro, other implementing jurisdictions, and with project sponsors to explore ways to maximize participation in project workforce hours.
- **Affirmative Marketing, Tenant Selection & Lease-Up.** Consistent with the Bond Framework and with community feedback, Hillsboro will work with developers/owners to ensure that Bond financed housing serves communities of color, families with children and multiple generations, people living with disabilities, seniors, veterans, households experiencing or at risk of homelessness, and households at risk of displacement. Hillsboro will require that project developers/owners make units available to minorities and disadvantaged populations using best practices.

In general, this will require:

- Affirmative outreach and marketing to target populations. Developers/owners, and their property management companies (if applicable) will be expected to engage in proactive efforts to make disadvantaged populations aware of the availability of units, and the process and timeline for application. The City will work with project sponsors to help identify specific target populations for each project and will review the proposed outreach and marketing strategy for each project. Consistent with the feedback provided in the community engagement phase, affirmative marketing may include working with community-based organizations that serve communities of color, low-income and/or special needs populations.



- Hillsboro will require that project sponsors use low barrier screening criteria that balances access to target populations, project operations, and community stability. Typical requirements may include less than standard market apartment income-to-rent ratios, reduced credit history requirements, and criminal history requirements that are most directly tied to tenant success. Project sponsors will be required to review appeals to denials of standard screening criteria that take into consideration efforts of applicants that demonstrate stability and potential for tenant success. Project sponsors are also required to review appeals if the disqualifying aspects of a denial are related to a disability and make reasonable accommodations as appropriate.

### **Project Monitoring**

Projects will be subject to monitoring throughout the development process and period of affordability. The monitoring process and expectations will be documented in agreements with the City. In general, this will include:

- Monitoring During Development & Lease Up. Hillsboro will require monthly reports during the project development and will conduct monthly site inspections in coordination with other funding partners to ensure progress to on-time and on-budget completion. Hillsboro will sign off on any change orders and on monthly draw requests.
- During Operations. Hillsboro will require annual reports that include information about project physical condition, fiscal condition, occupancy, tenant income verification, and voluntarily collected tenant demographics. Hillsboro will conduct periodic site inspections in coordination with other funding partners.

### **IX. Ongoing Community Engagement – Phase II**

The completion and approval of this LIS will initiate the beginning of Phase Two for community engagement related to Bond implementation. Phase Two is the long-term and ongoing community engagement directly related to planning, identification and development of affordable housing projects. For this future effort, the City may partner with other jurisdictions such as in Phase I community engagement and/or may contract with a community engagement practitioner to provide additional capacity to continue efforts to engage under-represented communities, neighborhoods living in the area of the new affordable housing developments and the community in general.

The City will work to ensure that the ongoing community engagement will be timely, transparent and include materials in all appropriate languages and interpretation as needed.

Community engagement will target:

- Underrepresented communities who have historically faced systemic barriers to affordable housing such as communities of color, people with low incomes, seniors, people with physical or mental disabilities, people involved with the justice system, people with limited English proficiency, immigrants and refugees, tenants of affordable housing, people at risk of displacement, and people experiencing homelessness. Engagement will focus on community members providing advice about how the City can address and reduce these systemic barriers both in regard to a specific project(s) and also on an ongoing basis.
- Neighbors living in the area or adjacent to the new affordable housing developments – Engagement strategies will be focused on neighborhoods where a specific housing project is proposed. These efforts may coincide with, or may be separate from, outreach and notifications associated with land use processes.

To ensure that impacted communities are involved in decision-making the City will:

- Maintain an interested and affected group contact list.
- Promote, publish and share opportunities and updates in multiple formats and languages as needed. This may include electronically, hard copy, social media, and by telephone (as requested.)
- Ensure that in-person engagement opportunities are accessible to all by being held in the evenings and/or on weekends, in different community locations and places where people naturally convene, and include community support such as food, child care and translation services.

The City will also develop evaluation measures that allow adjustments to community engagement approaches related to ongoing bond implementation.

## **X. Reporting on the Implementation Strategy**

### **Annual Report**

Hillsboro staff will prepare an annual report to the Hillsboro City Council on the progress of the Local Implementation Strategy. This report will be made available to the public and interested stakeholders. The report will include information on committed and completed projects (e.g. project status, Bond funding amounts, total project cost, and units produced by unit size, type and income level served). The report will also include information on overall progress toward achievement of the framework goals and the balance of Bond funding available.

### **Reporting to Metro**

Hillsboro will submit annual reports to Metro in accordance with the Intergovernmental Agreement.

## EXHIBIT B TO IGA

### Schedule of Administrative Funding and Program Milestones

Total administrative funding available: \$855,939

The following schedule is subject to annual review and may be revised with approval from the Metro COO.

Fiscal year	Administrative funding annual allocation	Percent of total share of administrative funding	Anticipated Program Milestones
2019-20	\$171,188	20%	<b>RFP/NOFA 1:</b> Release of RFP/NOFA for project on a City-owned site
2020-21	\$171,188	20%	<b>RFP/NOFA 1:</b> Developer selection, Disposition and Development Agreement <b>NOFA 2:</b> Release NOFA for sites/projects proposed by developers
2021-22	\$171,188	20%	<b>RFP/NOFA 1:</b> Groundbreaking <b>NOFA 2:</b> Developer selection, Disposition and Development Agreement
2022-23	\$171,188	20%	<b>RFP/NOFA 1:</b> Certificate of Occupancy <b>NOFA 2:</b> Groundbreaking <b>NOFA 3:</b> Release NOFA for sites/projects proposed by developers
2023-24	\$171,188	20%	<b>NOFA 2:</b> Certificate of Occupancy <b>NOFA 3:</b> Developer selection, Disposition and Development Agreement
2024-25	\$		<b>NOFA 3:</b> Groundbreaking
2025-26	\$		<b>NOFA 3:</b> Certificate of Occupancy

*Examples of program milestones:*

- *Release of Notice of Funding Availability (NOFA) or Request for Proposals (RFP)*
- *Site or building acquisition*
- *Developer selection*
- *Disposition and Development Agreement (DDA)*
- *Groundbreaking*
- *Certificate of Occupancy*
- *Lease up*

After recording return to:  
Office of Metro Attorney  
600 NE Grand Avenue  
Portland, OR 97232-2736  
Attn: \_\_\_\_\_

**DECLARATION OF AFFORDABLE HOUSING  
LAND USE RESTRICTIVE COVENANTS**

This Declaration of Affordable Housing Land Use Restrictive Covenants (this "Declaration") is entered into as of \_\_\_\_\_, 2020 (the "Effective Date"), by and between Metro, a municipal corporation of the State of Oregon ("Metro") and \_\_\_\_\_ ("Owner").

**RECITALS**

A. Owner is the owner of certain real property commonly known as \_\_\_\_\_ in \_\_\_\_\_, Oregon, and legally described on Exhibit A attached hereto.

B. Owner and Metro are parties to that certain Intergovernmental Agreement dated \_\_\_\_\_, 20\_\_ (the "IGA"), pursuant to which Metro provided to Owner certain funds applied by the Owner to acquire the Property, which funds were proceeds of certain general obligation bonds issued by Metro for the limited purpose of funding affordable housing projects as authorized by Measure 26-199 approved by the voters on November 6, 2019 (the "Ballot Title").

C. Owner plans to improve a \_\_\_\_ acre parcel [and modify an existing building from its current use as a \_\_\_\_\_] into [BRIEFLY DESCRIBE DEVELOPMENT PLAN].

D. The parties expect that the Property will be redeveloped and comprised of approximately \_\_\_\_\_ units of affordable housing (the "Project"). At initial occupancy, the Project will serve qualifying persons that earn \_\_\_\_% or less of area median income (AMI).

E. As required by the IGA, and as consideration for Metro's provision of general obligation bond funds to the Owner to acquire the Property, Owner agrees to the restrictions, covenants and obligations set forth herein.

**SECTION 1  
PROPERTY USE RESTRICTIONS**

**1.1 Affordable Housing Land Use.** For the term of this Declaration, the Property and the Project shall at all times be owned, developed, constructed, improved and operated solely as "Affordable Housing" within the meaning of the Ballot Title and as described in the Metro Housing Program Work Plan approved by the Metro Council on January 31, 2019 (the "Work Plan"). For

purposes of the Ballot Title and the Work Plan, “Affordable Housing” is defined as improvements for residential units occupied by households earning 80% or less of median gross household income, adjusted for household size, for the Portland, Oregon metropolitan statistical area as established each year by the U.S. Department of Housing and Urban Development.

1.2 **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended; 42 U.S.C. Section 2000d; Section 303 of the Age Discrimination Act of 1975, as amended; 42 U.S.C. Section 6102; Section 202 of the Americans With Disabilities Act of 1990; 42 U.S.C. Section 12132, no owner of the Property shall discriminate against any employee, tenant, patron or buyer of the Property improvements because of race, color, creed, national origin, sex, age or disability. In addition, any such owner shall comply, to the extent applicable to the Property, with the applicable federal implementing regulations of the above-cited laws and other applicable state and federal laws. “Owner” shall mean the fee simple title holder to the Property or any part thereof, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

1.3 **Running with the Land.** Owner hereby declares that the Property subject to this Declaration shall be held, sold and conveyed subject to the forgoing land use restrictions and covenants, which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of Metro. Owner agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to ensure that these restrictions run with the Property for the term of this Declaration.

## SECTION 2 GENERAL PROVISIONS

2.1 **Enforcement.** Metro shall have standing, and may bring an action at law or equity in a court of competent jurisdiction to enforce all restrictions and covenants established by this Declaration and to enjoin violations, ex parte, if necessary. The failure to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter. If legal proceedings of any type are begun so as to enforce the Declaration, the prevailing party shall recover reasonable attorney’s fees, including attorney’s fees on appeal. However, attorney’s fees shall not be recovered by a prevailing party that initiated the legal proceedings unless the initiating party provided 30 days’ written notice to the other party, its successors, and assigns, prior to filing any legal action.

Metro is the only party entitled to enforce the restrictions and covenants set forth herein. Nothing in this Declaration 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.

2.2 **Duration.** Subject to the provisions of the IGA providing for the early termination of this Declaration upon the occurrence of certain events or conditions, or otherwise upon mutual consent of the parties, the restrictions established by this Declaration shall run with and bind the Property in perpetuity.

2.3 **Amendment.** This Declaration may not be amended or revoked except by written

**2.4 Limitation of Liability of Metro.** Under no circumstances shall Metro have any liability to Owner, its successors and assigns, or other user or tenant, lessee, guest or invitee of Owner, its successors and assigns, by virtue of Metro's enforcement or failure to enforce the rights established by this Declaration, and Owner, its successors and assigns, should defend and hold harmless Metro from same.

**2.6 Breach of Agreements.** Owner represents and warrants that this Declaration does not violate any of the terms or conditions of any other agreement to which Owner is a party, or to which the Property is subject.

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Title:

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by \_\_\_\_\_, as \_\_\_\_\_, of \_\_\_\_\_, an Oregon \_\_\_\_\_.

Page 3 of 5

METRO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of Oregon )  
 ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by \_\_\_\_\_, as \_\_\_\_\_, of \_\_\_\_\_, an Oregon \_\_\_\_\_.

(Signature of Notarial Officer)

**Exhibit A**

**Property Legal Description**



## EXHIBIT D to IGA

### Required Project Completion Reporting

#### Immediate Post Closing (within 10 business days after closing):

- ☐ Copy of recorded Metro approved restrictive covenant
- ☐ Copy of settlement statement

#### Post Construction Completion (within 3 months of recorded temporary certificate of occupancy):

- ☐ Metro project closeout form attesting to use of Metro bond funds for capital costs
- ☐ Copy of temporary certificate of occupancy
- ☐ Resident Services Plan (OHCS form)
- ☐ Affirmative Fair Housing Marketing Plan (HUD Form)
- ☐ Community engagement report
- ☐ MWESB/COBID participation outcomes
- ☐ Workforce outcomes report, if project has stated workforce goals
- ☐ Draft project summary

#### Post-Occupancy (within 3 months of 95% occupancy):

- ☐ Marketing and application outcomes report
- ☐ Final project summary