

October 20, 2022

Housing Authority Board of Commissioners
Clackamas County

Approval of an Amendment to the Intergovernmental Agreement with the City of Lake Oswego and Metro increasing the contribution to the Developer Solicitation and Selection for the Boones Ferry Project in Lake Oswego.

Total contract value is \$12,909,788. Funding through the Regional Affordable Housing Bond Site Acquisition Program Set-aside Funds.

No County General Funds are involved.

Purpose/Outcomes	Approval of Amendment #1 to Intergovernmental Agreement (IGA) for Developer Solicitation and Selection adding \$5,759,788 contribution of Regional Affordable Housing Bond funds from Metro's Site Acquisition Program (SAP) set-aside to support the acquisition and development of approximately 50 units of affordable housing in Lake Oswego's Lake Grove neighborhood (Boones Ferry Road Project).
Dollar Amount and Fiscal Impact	The Total Contract Value is now \$12,909,788 of Regional Affordable Housing Bond funds. No Clackamas County General Funds are involved.
Funding Source(s)	Regional Affordable Housing Bond Funds (Metro's Site Acquisition Program set-aside)
Duration	The IGA will expire on the earlier of: <ul style="list-style-type: none"> • Four (4) years from the effective date • Execution of a Disposition and Development Agreement (DDA) between a developer and Metro • Parties determine they cannot agree upon a developer's selection after an extended solicitation.
Previous Board Action/Review	7/21/2022 - Board Approval of Intergovernmental Agreement for Developer Solicitation and Selection 4/18/2022, 2/17/2022 & 10/14/2021 – development updates via email 2/9/2021 - Board Approves of MOU with Lake Oswego & Metro
Strategic Plan Alignment	This funding aligns with the County's strategic priority to ensure safe, healthy, and secure communities by increasing the inventory of affordable housing units in Clackamas County.
Counsel Review	10/10/2022 - Andrew Naylor, County Counsel/
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide a brief explanation: The item is an IGA
Contact Person	Devin Ellin, Director of Housing Development, HACC 971-227-0472
Contract Number	IGA #10863 – Amendment #1

BACKGROUND:

The Housing Authority of Clackamas County, a division of the Health Housing and Human Services Department of Clackamas County, is seeking the approval of Amendment 1 to the IGA

between the City of Lake Oswego, Metro, and the Housing Authority for the solicitation and selection of an affordable housing developer for the Boones Ferry Road property in Lake Oswego. This amendment would add a \$5,759,788 allocation of Clackamas County's Metro Affordable Housing Bond Measure SAP funds for a new total allocation of up to \$12,909,788 for the acquisition, site preparation, and development of the Boones Ferry Property.

PROJECT DETAILS:

In 2021, the Housing Authority of Clackamas County (HACC) entered into a non-binding memorandum of understanding (MOU) with Metro and the City of Lake Oswego (City) to explore the acquisition of land to develop affordable housing. The City owns six tax lots at the intersection of Boones Ferry Road and West Sunset Drive in the City's Lake Grove neighborhood that is currently used for construction staging. The City has identified the roughly 1.4-acre Property as a suitable location for developing approximately fifty (50) units of multi-family affordable housing.

Metro's SAP acquires land for future affordable housing in areas of Clackamas County with access to high-quality schools, grocery shopping, and transit. It provides gap funding to support the private creation of affordable housing on Metro properties. Metro wishes to acquire the Lake Oswego Boones Ferry property from the City for said purposes. Metro's Housing Bond property acquisition and gap financing funds are only available to properties acquired and owned by Metro.

The IGA is to determine a process, timelines, and criteria for the parties to conduct solicitation and selection of an affordable housing developer with which Metro will commit to negotiating the disposition and development of the Property. The developer selection process, timelines, and criteria will be established by mutual consent of Metro, HACC, and the City. The developer solicitation and selection will be followed by Metro's entry into Exclusive Negotiating Agreements and Disposition and Development Agreements with the selected Developer, leading to the construction of a Project consistent with the selection criteria.

Coinciding with this IGA, the City and Metro will enter into an IGA for the Purchase and Sale of the Property to the Metro Housing Bond program for a purchase price equivalent to the appraised fair market value, subject to commercially reasonable conditions precedent to closing.

IGA Amendment #1 would allow HACC to adjust the use of contributions from Clackamas County's Metro SAP funds from \$7,150,000 up to \$12,909,788 towards this project, thus utilizing all available funding to further this project.

NEXT STEPS:

The Developer RFQ/P is anticipated to be released in late 2022. Upon selecting a developer, Metro will enter into an Exclusive Negotiating Agreement with the selected Developer, which will provide the Developer with site control for a period of time, during which the Developer will begin to design the project and secure financing.

Metro will negotiate the terms of a disposition and development agreement with the selected Developer, providing for the conveyance of the Property to the selected Developer at a reduced

price in return for, among other things, the construction of approximately fifty (50) units of multi-family, income-restricted, affordable housing on the Property.

ATTACHMENTS:

- IGA for Developer Solicitation and Selection Amendment 1
- IGA for Developer Solicitation and Selection

RECOMMENDATION:

Staff recommends the Board approval of Amendment #1 to the IGA # 10863 between HACC, Metro, and the City, increasing the allocation of SAP funds to \$12,909,788 for the acquisition, site preparation, and development of the Boones Ferry Property in Lake Oswego and to authorize Commissioner Tootie Smith, Chair, to sign the amendment on behalf of the Housing Authority Board.

Respectfully submitted,

Rodney A. Cook

Rodney A. Cook, Director
Health, Housing, and Human Services

Metro Contract No. 938070 and 938070A

**1ST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
FOR DEVELOPER SOLICITATION AND SELECTION**

THIS 1ST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR DEVELOPER SOLICITATION AND SELECTION ("Amendment") is entered into by and between Metro, a municipal corporation established pursuant to ORS Chapter 268 and the Metro Charter ("Metro"), the Housing Authority of Clackamas County ("HACC"), and the City of Lake Oswego (the "City"), an Oregon municipal corporation (each a "Party"; collectively, "the Parties"). This Agreement is effective as of _____, 2022 (the "Effective Date")

RECITALS

A. The Parties entered into an Intergovernmental Agreement for Developer Solicitation and Selection, effective August 15, 2022, Metro Contracts #938070 and #938070A, (the "IGA"), providing the terms and conditions under which the Parties are to cooperate with each other in a developer solicitation and selection process for the redevelopment of the "Boones Ferry Property" hereafter defined, and establishing the amount of Clackamas County's Metro Affordable Housing Bond Measure Site Acquisition Program ("SAP") funds (\$7,150,000) that were to be committed to the acquisition, site preparation and development of the Boones Ferry Property.

B. On, June 28, 2022, Metro and the City of Lake Oswego entered into an Intergovernmental Agreement for Purchase and Sale (Metro Contract #937973), governing the sale to Metro of the "Boones Ferry Property" - six undeveloped tax lots at the intersection of Boone's Ferry Road and West Sunset Drive owned by the City of Lake Oswego - for redevelopment into affordable housing using Metro Affordable Housing Bond Measure ("Metro Measure") funds.

C. ~~HAAC~~^{HACC} has requested that, instead of committing \$7,150,000 of the \$12.9 million of SAP funds allocated to ~~HAAC~~^{HACC} under the Metro Measure to the Boones Ferry Property and reserving the balance for a future acquisition, ~~HAAC~~^{HACC} opts to commit the full \$12,909,788 to the acquisition, site preparation and development of the Boones Ferry Property.

AGREEMENT

- 1. Adjusted HAAC Contribution.** ~~HAAC~~ **HACC** agrees to allocate the full \$12,909,788 of its Metro Affordable Housing Bond Measure Site Acquisition account to the Boones Ferry Property. Section 6.4.3 of the IGA is thus modified as follows:

6.4.3 An all-in contribution of ~~seven million one hundred fifty thousand and 00/100~~ twelve million nine hundred nine thousand seven hundred eighty eight dollars (~~\$7,450,000.00~~). (\$12,909,788). This contribution will be inclusive of Metro's acquisition, due diligence, and other expenses incurred by Metro in preparing the site for disposition, including but not limited to any environmental investigation, mitigation and administrative compliance costs.~~for the site.~~

- 2. Metro Contact for Notices.** Metro's point of contact has changed. Section 14 of the IGA is modified as follows:

*Metro
~~Elissa Gertler~~ Andy Shaw, Planning Director
600 N.E. Grand Avenue
Portland, OR 97232-2736
Email: ~~Elissa.Gertler@oregonmetro.gov~~ Andy.Shaw@oregonmetro.gov
Phone: ~~503-797-1752~~ 503-797-1763*

- 3. ~~Metro and LIP~~ **The Parties**** hereby ratify and confirm this addition and modification to the terms of the IGA. All other terms and conditions set forth in the IGA are hereby confirmed and remain in full force and effect.

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

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

Metro

**Housing Authority of Clackamas
County**

By: _____

By: _____

Name: **Marissa Madrigal**

Name: **Tootie Smith**

Title: **Chief Operating Officer**

Title: **Chair**

Date: _____

Date: _____

City of Lake Oswego

By: 
Martha Bennett

Title: **City Manager**

Date: **9/20/22**

Original agreement for reference

**INTERGOVERNMENTAL AGREEMENT
FOR DEVELOPER SOLICITATION AND SELECTION**

THIS INTERGOVERNMENTAL AGREEMENT FOR DEVELOPER SOLICITATION AND SELECTION (“Agreement” or “IGA”) is entered into by and between Metro, a municipal corporation established pursuant to ORS Chapter 268 and the Metro Charter (“Metro”), the Housing Authority of Clackamas County (“HACC”), and the City of Lake Oswego (the “City”), an Oregon municipal corporation (each a “Party”; collectively, “the Parties”). This Agreement is effective as of _____, 2022 (the “Effective Date”).

RECITALS

A. The City of Lake Oswego seeks to promote the creation of new multi-family affordable housing options within the City. The City owns and is currently using for construction staging six undeveloped tax lots at the intersection of Boone’s Ferry Road and West Sunset Drive legally described on Exhibit A attached hereto (the “Property”). The City has identified the roughly 1.4 acre Property as a suitable location for multi-family affordable housing.

B. At the general election on November 6, 2018, the voters of the Metro region approved Ballot Measure 26-199, providing \$652.8 million dollars in funding to build new affordable housing in the region (the “Metro Housing Bond”), of which HACC has been allocated \$116,188,094 to build new affordable housing in Clackamas County, via an Intergovernmental Agreement between HACC and Metro effective December 10, 2019 (the “LIP IGA”). Pursuant to the LIP IGA, HACC has created a Local Implementation Strategy (“LIS”) outlining approaches for achieving its share of affordable housing unit production targets required by the Metro Housing Bond. HACC supports the creation of affordable housing opportunities in the City, consistent with its LIS for the Metro Housing Bond program.

C. Metro’s Affordable Housing Bond Regional Property Acquisition Program (the “Regional Program”) acquires land for future affordable housing in areas of Clackamas County with access to high quality schools, grocery shopping, and transit, and provides gap funding to support the private creation of affordable housing on Metro properties. Metro wishes to acquire the Property from the City for said purposes. Metro’s Housing Bond property acquisition and gap financing funds are only available to properties acquired and owned by Metro.

D. HACC expects to commit a portion of its Metro Housing Bond allocation to development of affordable housing on the Property as well. Under the LIP IGA with HACC, Metro must make good faith efforts to coordinate and consult with HACC to ensure Metro's acquisition of the Property supports HACC in reaching its Metro Affordable Housing Bond unit production targets.

E. On June 3, 2021 Metro, the City and HACC entered into a non-binding MOU setting forth the expectations governing their cooperative pursuit of the intersecting processes required to generate affordable housing for approximately fifty (50) families on the Property, including amendments to the City’s Comprehensive Plan and Zoning, Property acquisition and disposition, and multi-family affordable housing project developer selection. The Lake Oswego City Council completed the first step of this process on October 5, 2021, by adoption of Ordinance 2872, approving an amendment to its Comprehensive Plan, changing the zoning designation of the Property to WLG-OC and making multi-family affordable housing an allowed use subject to conditions. All applicable local and state land use law appeal periods have expired, no appeals have been filed, and the decision of the Lake Oswego City Council applying the new

zoning to the Property is final. The next steps in the process are acquisition and developer solicitation and selection.

F. Coinciding with and conditioned upon entry into this IGA, the City and Metro will enter into an Intergovernmental Agreement for Purchase and Sale of the Property (the “Purchase IGA”), providing for the sale of the Property to the Metro Housing Bond program, for a purchase price equivalent to the appraised fair market value, subject to commercially reasonable conditions precedent to closing.

G. As set forth in more detail in this IGA, the Parties wish to agree to cooperate with each other in a developer solicitation and selection process for the Property, beginning during the pre-closing period and continuing after Metro has acquired the Property, to culminate in the selection of a mutually agreed upon developer for an approximately fifty (50) unit income restricted affordable housing project to be built upon the Property (the “Project”).

H. On, June 21, 2022, the Lake Oswego City Council adopted Resolution 22-19 authorizing the city manager to enter into this Agreement with Metro and HACC.

AGREEMENT

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual covenants and agreements set forth herein, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

1. Purpose. The purpose of this Agreement is to determine a process, timelines and criteria for the Parties to conduct solicitation and selection of an affordable housing developer with which Metro will commit to negotiate the disposition and development of the Property. The developer selection process, timelines and criteria will be established by mutual consent of Metro, HACC and the City. The developer solicitation and selection will be followed by Metro’s entry into Exclusive Negotiating Agreements and Disposition and Development Agreements with the selected developer, leading to construction of a Project consistent with the selection criteria.

2. Acknowledged Requirements and Priorities:

2.1 The Project must proportionately contribute to HACC’s Metro Affordable Housing Bond unit production goals for 30% Area Median Income (“AMI”) units and family sized units. Approximately 40% of units supported with bond funds must house households earning 30% of AMI or less and half of Metro Affordable Housing Bond supported units must be two-bedroom units or larger. All Affordable Housing Bond supported housing units must be restricted at 80% of AMI or less and no more than 10% may be between 60% and 80% of AMI.

2.2 The Project must be developed at a scale consistent with efficiency in affordable housing financing, construction, and operations, yielding at least approximately fifty (50) regulated affordable units.

2.3 The selected developer must commit to the racial equity benchmarks set forth in HACC’s Local Implementation Strategy for Project construction subcontracting and property management.

2.4 The amount of Metro’s Regional Program gap funding for the Project on the Property will be determined based on unit production and level of affordability, in alignment with and supporting HACC’s LIS unit production targets.

2.5 The Project proposed must comport with standards of construction and quality of materials consistent with the City's adopted policies and community development code as provided by the City for inclusion into the solicitation.

2.6 The City may identify, through its outreach processes, other reasonably consistent community priorities which it may include during the process of preparing the developer solicitation.

2.7 The Property will be acquired with Metro Regional Program bond funds, which obligate Metro to develop the site for affordable housing.

3. City Role and Responsibilities. With the approval of its governing body, the City will:

3.1 Enter into the Purchase IGA with Metro.

3.2 Provide input and recommendations for the developer solicitation document and representatives for the developer selection committee and collaborate with Metro and HACC in good faith to develop a mutually agreeable solicitation document and process as set forth in Section 6.

3.3 Use reasonable best efforts to identify and provide City incentives, including in-kind staff assistance and City Council-adopted financial incentives for the Project, to be identified in the solicitation document.

3.4 Participate together with Metro and HACC in good faith in the Developer Solicitation and Selection process as set forth in Section 6.

3.5 Review and approve the Project through its typical land use and development approval processes.

4. Metro Role and Responsibilities. With the approval of its governing body, Metro will:

4.1 Enter into the Purchase IGA with the City providing for the acquisition of the Property by Metro from the City, subject to Metro's ordinary and customary due diligence preconditions. Upon entry into the Purchase IGA, perform due diligence and acquire the Property from the City upon satisfaction of the conditions precedent set forth in the Purchase IGA.

4.2 Lead a stakeholder panel to identify stakeholder priorities for the development of the site. This panel will be seated in collaboration with the City and HACC and will prepare a Statement of Values which will be incorporated into the developer solicitation.

4.3 Establish the developer solicitation document and process. Metro will collaborate in good faith with the City and HACC to ensure the solicitation document reflects the needs and priorities of Metro, the City and HACC and to establish a mutually agreeable timeline and process for the developer solicitation as set forth in Section 5.

4.4 Release a developer solicitation and convene the developer selection committee, which shall provide for balanced representation between HACC, Metro, and the City and select a developer and project concept with the concurrence and support of the City and HACC MOU representatives as set forth in Section 6.

4.5 Following selection of a developer, negotiate in good faith to enter into an Exclusive Negotiating Agreement with the selected developer, as set forth in Section 7.

4.6 Negotiate in good faith with the selected developer the terms of a Disposition and Development Agreement ("DDA") between Metro and the developer. Enter into a DDA if mutually satisfactory between Metro and developer, as set forth in Section 8.

5. HACC Role and Responsibilities. With the approval of its governing body, HACC will:

5.1 Provide input and recommendations for the developer solicitation document and staff for the developer selection committee and collaborate with Metro and the City in good faith to develop a mutually agreeable solicitation document and process as set forth in Section 6.

5.2 Participate together with Metro and the City in good faith in the Developer Solicitation and Selection process as set forth in Section 6.

5.3 HACC will be responsible for applying to Metro's Affordable Housing Bond Program for a Conceptual and Final funding commitment for the selected Project as further described in the existing LIP IGA between Metro and HACC governing the use of Regional Affordable Housing Bond funds.

5.4 HACC will be responsible for negotiating and entering into a funding agreement with selected developer and committing its Regional Bond funds, as promised below, to the Project.

6. Preparation for Developer Solicitation and Selection.

6.1 The developer solicitation will be by Request for Qualifications/Request for Proposals ("RFQ/P") process. The Parties will cooperate and negotiate in good faith to reach consensus approval of the RFQ/P criteria and selection timelines and process. The RFQ/P will be released following Metro's acquisition of the Property.

6.2 Shared Contributions:

6.2.1 Each party will review, provide input, and approve the RFQ/P prior to release.

6.2.2 Each party will contribute staff to a technical review of received submissions.

6.2.3 Each party will work together to seat a developer selection committee which will recommend a developer team and concept for endorsement by the Parties.

6.3 City's Contributions: The City will provide the following in preparation for the RFQ/P:

6.3.1 Summary of City incentives and resources available for the Project, if any.

6.3.2 Existing due diligence materials on the property including, if any:

- Phase I and/or Phase II Environmental studies;
- Soil reports;
- Surveys;
- Title Insurance Policy.

6.4 Metro's Contributions: Metro will provide the following in preparation for the RFQ/P:

6.4.1 Metro Affordable Housing Bond Regional Acquisition Program goals and requirements for the Project.

6.4.2 Due diligence materials on the property, if any, obtained by Metro for its acquisition:

- Phase I and/or Phase II Environmental studies;
- Surveys;
- Geotechnical investigation reports;
- Architectural and civil engineering analysis.

6.4.3 An all-in contribution of seven million one hundred fifty thousand and 00/100 dollars (\$7,150,000.00). This contribution will be inclusive of Metro's acquisition and due diligence expenses for the site.

6.5 HACC's Contributions: In preparation for the RFQ/P, HACC will establish the amount of its allocation of Regional Affordable Housing Bond program funds it will make available to support affordable housing on the Property and will share its funding criteria and Project requirements consistent with its Local Implementation Strategy for inclusion in the development solicitation.

6.6 RFQ/P Selection Criteria. Metro will establish the RFQ/P selection criteria, allocation of scoring, process, terms and conditions, with input, review, and approval by the City and HACC, based on the Parties' expected contributions set forth herein. Proposals must satisfy the requirements and priorities set forth in Section 2 above, all applicable Metro Affordable Housing Regional Acquisition Program criteria, HACC's LIS, the City Zoning and Development Code, and all applicable provisions of ORS 279A-C.

7. Developer Solicitation and Selection. The Developer solicitation and selection will be conducted by the Parties in cooperation with a Review Committee.

7.1 Costs. Metro will release the RFQ/P with the consensus support of Metro, the City and HACC. Metro will be responsible for administering the RFQ/P process and will pay for Metro's administrative costs of developer solicitation.

7.2 Review Committee. The Parties, in cooperation with HACC, will appoint a Review Committee (the "Committee") by the mutual agreement, to provide equal representation to each party. The Committee will review responses to the RFQ/P and provide developer selection recommendations.

7.3 Committee Recommendation Scoring. The Committee will score responses for each Property based on the criteria and scoring allocation described in the Request for Qualifications and Proposals, and the highest scoring developer for each Property shall receive the Committee's recommendation. The Committee shall also provide a yes/no indication as to whether, regardless of score, it recommends going forward with any or none of the submitted responses.

7.4 Approval by Parties. The Review Committee's recommendation will be advisory to HACC. In the event that the HACC does not agree with the Review Committee's recommendation, the Parties will work together to either select a mutually agreeable Team from among the submitted proposals or to re-open the solicitation for an additional ninety (90) days. In the event that after an extended solicitation, no mutually agreeable team is selected, Metro will continue to independently pursue an affordable housing development for the site.

8. Exclusive Negotiating Agreement. Upon the selection of a developer, Metro will enter into an Exclusive Negotiating Agreement with the selected developer which will provide developer with site control for a period of time during which the developer will begin to design the Project and secure financing.

9. Disposition and Development Agreement. Metro will negotiate the terms of a disposition and development agreement ("DDA") with the selected developer, providing for the conveyance of the property to the selected developer at a reduced price, in return for, among other things, the construction of an approximately fifty (50) unit multi-family income restricted affordable housing Project on the Property. Metro will have sole authority to negotiate the terms of the DDA with the selected developer.

10. Term. This Agreement will expire on the earlier of: four (4) years from the Effective Date; the date Metro executes a DDA with a developer selected as set forth in this IGA; or the date the Parties determine they are unable to agree upon the selection of a developer after an extended solicitation.

11. Termination. This Agreement may be terminated for cause or mutual convenience, subject to the requirements set forth in this section. Notices of termination must be issued in one of the two forms set forth below:

11.1 Termination for Cause. The Parties will negotiate in good faith to resolve any dispute arising out of this Agreement. However, any Party to this Agreement may declare a default before the date of expiration, if that Party determines in its sole discretion that a material breach of the terms of this Agreement has occurred. If any Party so determines, the aggrieved Party shall promptly document the breach and state a demand that the breach be cured. The breaching Party must thereafter cure said breach within thirty (30) days of receipt of said notice. If the breaching Party fails to so cure, or under circumstances where the breach cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or after thirty (30) days has expired fails to continue diligently to cure the breach until finally cured, the aggrieved Party may, at its sole discretion, immediately terminate this Agreement. The exercise of this termination right will not extinguish or prejudice the terminating Party's right to seek damages and enforcement of the terms of this Agreement in a court of competent jurisdiction with respect to any breach that has not been cured.

11.2 Termination for Convenience. The Parties may terminate this Agreement for convenience based on mutual written agreement.

12. Property Management. Metro will manage the Property as set forth in this section after the closing of the Metro conveyance.

13. Covenant to Provide Further Assurances. The Parties acknowledge that they are entering into a long-term arrangement in which their cooperation is required. At any time and from time to time during the Term of this Agreement, the Parties will cooperate with each other and promptly upon request and without further consideration, execute or deliver any other documents, instruments, files, books, materials and records, and do all further acts and things as may be reasonably necessary or desirable to carry out the intent of the Parties under this Agreement. No Party may unreasonably withhold conditions or delay its compliance with any reasonable request made pursuant to this Section.

14. Notices. All notices required or permitted to be given must be in writing to the address set forth below and will be deemed given upon (a) personal service, (b) deposit in the United States Mail, postage prepaid, (c) deposit with a nationally recognized overnight courier service, or (d) by email delivery. All such notices will be deemed received (e) upon personal service, (f) three (3) days after deposit in the United States Mail, postage prepaid, (g) one (1) day after deposit with a nationally recognized overnight courier service, or (h) if by email delivery, (i) on the date of delivery, provided that the email is sent on a business day during the hours stated above, or (j) on the next business day if the email is sent outside of the hours state above).

To Metro: Metro
Elissa Gertler, Planning Director
600 N.E. Grand Avenue
Portland, OR 97232-2736
Email: Elissa.Gertler@oregonmetro.gov
Phone: 503-797-1752

To City: City of Lake Oswego
Scot Siegel, Community Development Director
P.O. Box 369
Lake Oswego, OR 97034
Email: ssiegel@ci.oswego.or.us
Phone: 503-699-7474

To HACC: Devin Ellin
Director of Housing Development
Housing Authority of Clackamas County
P.O. Box 1510
Oregon City, OR 97045
Email: dellin@clackamas.us
Phone: 971-227-0472

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manners set forth above will be effective when received by the party for whom it is intended. Telephone number and email addresses are for information only.

15. Insurance; Indemnification; Limitation on Liability.

15.1 The Parties 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.

15.2 Subject to the limitations and conditions of the Article XI, Sections 7 and 11 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260-300, each party will indemnify, defend, and hold harmless the other Party, its elected officers and employees, from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses suffered or incurred as a result of third-party claims arising out of a Party's performance of this Agreement or resulting in whole or in part from any act, omission, negligence, fault or violation of law by a Party, its officers, employees, agents, and contractors. This indemnity provision does not apply to third-party claims resulting from the sole negligence or willful misconduct of a Party.

15.3 In no event will the Parties be liable to each 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.

16. Assignment. No Party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other Party, except the Parties may subcontract for performance of any of their responsibilities under this Agreement.

17. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this Agreement.

18. No Partnership. Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between the Parties.

19. Non-Waiver of Government Rights. Subject to the terms and conditions of this Agreement, by making this Agreement the City is specifically not obligating itself with respect to any discretionary action relating to development approvals or the operation of the improvements to be constructed on the Property, except as expressly set forth herein.

20. Conflict of Interests. No officer, director or employee of the Parties shall have any personal interest, direct or indirect, in the Agreement, nor shall any such elected official, director, or employee participate in any decision relating to the Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

21. No Third Party Beneficiaries. The City, Metro and HACC 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.

22. Oregon Law, Dispute Resolution, and Forum. This Agreement is to be construed according to the laws of the State of Oregon. Any litigation between the Parties 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.

23. Compliance with Law. 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 government receiving funds pursuant to this Agreement.

24. Entire Agreement. Except as otherwise set forth herein in writing, this Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written communications, agreements or representations relating to this Property. No course of dealing between the Parties and no usage of trade shall be relevant to supplement any term used in this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by all Parties. The failure of a Party to enforce any provision of this Agreement shall not constitute a waiver by any Party of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year set forth below.

Housing Authority of Clackamas County

By: 
Tootie Smith

Title: Chair

Date: 07/21/2022


City of Lake Oswego

By: 
Martha Bennett

Title: City Manager

Date: June 23, 2022

Metro

DocuSigned by:
By: 
Marissa Madrigal

Title: Chief Operating Officer

Date: 8/15/2022

Exhibits:

Exhibit A – Legal Description of the Property

Exhibit A
Property Legal Description

PARCEL I:

Part of Lot 180, BRYANT ACRES PLAT 3, in the City of Lake Oswego, County of Clackamas, and State of Oregon, described as follows:

Beginning at the point of intersection of the East line of said Lot 180 with the South boundary of West Sunset Drive; thence South 0° 10' East 135 feet, more or less, along the East line of said lot to the Northeast corner of that certain tract of land reserved by the grantors in Deed to William J. Cooley and Milton M. Wolsborn, recorded June 20, 1950, in Deed Book 432, Page 500; thence South 89° 50' West 66 feet; thence North 0° 10' West 135 feet, more or less, to the South boundary of West Sunset Drive; thence East along said South boundary of West Sunset Drive, 66 feet to the place of beginning.

PARCEL II:

Part of Lot 181, BRYANT ACRES PLAT 3, in the City of Lake Oswego, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the Northwest corner of said Lot; thence South 89° 35' East, 288.9 feet to the most Easterly corner of said Lot; thence South 45° 08-1/2' West 252.55 feet; thence North 50° 55' West 160.42 feet to a point in the West line of Lot 181; thence North 0° 10' West 64.42 feet to the point of beginning.

EXCEPTING THEREFROM that portion described in Warranty Deed to The City of Lake Oswego, Oregon, a municipal corporation, recorded January 21, 1993 as Fee No. 93004379.

PARCEL III:

Part of Lot 180, BRYANT ACRES PLAT 3, in the City of Lake Oswego, County of Clackamas and State of Oregon, described as follows:

Beginning at the intersection of the West line of Lot 180 and the South line of W. Sunset Drive; thence South 89° 35' East along said South line 66 feet to the Northwest corner of that tract conveyed to Stephen S. Hazzard, et ux, by Deed recorded April 8, 1974, as Recorder's Fee No. 74 8577, Clackamas County Records; thence South 0° 10' East along the West line of said Hazzard Tract 137.59 feet to the Southwest corner thereof, said point also being the Northeast corner of that tract conveyed to Robert E. Reynolds, et ux, by Deed recorded July 8, 1974, as Recorder's Fee No. 74 18864, Clackamas County Records; thence South 89° 50' West along the North line of said Reynolds Tract 66 feet to the Northwest corner thereof, being a point on the West line of Lot 180; thence North 0° 10' West along said West line, 138.18 feet to the point of beginning.

PARCEL IV:

Part of Lot 180, BRYANT ACRES PLAT 3, in the City of Lake Oswego, County of Clackamas and State of Oregon, described as follows:

Beginning at a point on the West line of said Lot 180 at the intersection with the Northwest boundary line of Boones Ferry Road; thence North and following the West line of said Lot 180, a distance of 209.15 feet to an iron pipe; thence North 89° 50' East 66.00 feet to an iron pipe; thence South 0° 10' East 150.81 feet to an iron pipe set in the Northwesterly line of Boones Ferry

Road; thence South 48° 24' 30" West and following the Northwesterly line of Boones Ferry Road, 88.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Lake Oswego, by deed recorded January 14, 1993, as Recorder's Fee No. 93-02628.

PARCEL V:

Part of Lot 180, BRYANT ACRES PLAT 3, in the City of Lake Oswego, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe set in the point of intersection of the East line of Lot 180 with the Northwesterly boundary line of Lower Boones Ferry Road; thence North 0° 10' West 92.48 feet along the Easterly line of Lot 180 to an iron pipe; thence South 89° 50' West 66.00 feet to an iron pipe; thence South 0° 10' East, 150.81 feet to an iron pipe set in the said Northwesterly line of Lower Boones Ferry Road; thence North 48° 24' 30" East 88.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Lake Oswego by Deed recorded November 24, 1992, as Document No. 92-75195.

PARCEL VI:

A tract of land situated in the most Southerly part of Lot 181, BRYANT ACRES PLAT 3, in the City of Lake Oswego, County of Clackamas and State of Oregon, more particularly described as follows, to wit:

Beginning at an iron pipe set in the most Southerly corner of said Lot 181, said corner being in the center of Lower Boones Ferry Road in said Plat 3, from said beginning point; thence North 0° 10' West, 219.98 feet along the Westerly boundary line of said lot to an iron pipe; thence South 50° 55' East, 160.42 feet to an iron pipe set in the Southeasterly boundary line of said lot, last said boundary line being the said center line of Lower Boones Ferry Road; thence South 45° 08' 30" West 117.65 feet along the said Southeasterly boundary line to an iron pipe set in the angle of said line; thence South 48° 24' 30" West, 53.30 feet to the point of beginning.

EXCEPT that portion of property deeded by the State of Oregon to Steven R. Hambleton and Bonnie L. Hambleton, Recording Certificate No. 93-02191, and subsequently recorded in favor of the City of Lake Oswego by Deed recorded January 12, 1993, as Document No. 93-02192.



Rodney A. Cook
Director

July 21, 2022

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between the Housing Authority of Clackamas County, Metro, and the City of Lake Oswego to conduct a solicitation and selection process for awarding an affordable housing developer the Boones Ferry Project. Expected Total Value of \$7,150,000.

Clackamas County General Funds are not involved.

Purpose/Outcomes	Approval of Intergovernmental Agreement (IGA) between the Housing Authority of Clackamas County (HACC), Metro, and the City of Lake Oswego (City) to conduct a solicitation and selection process for awarding by mutual consent an affordable housing developer for the Boones Ferry Project in the Lake Grove neighborhood of Lake Oswego.
Dollar Amount and Fiscal Impact	It is expected \$7,150,000 would be awarded for the Boones Ferry Project, however, HACC reserves the option to allocate additional subsidy to the project on an as-needed basis.
Funding Source(s)	Metro Housing Bond Funds (Regional Property Acquisition Program set-aside)
Duration	The IGA will expire on the earlier of: <ul style="list-style-type: none"> • Four (4) years from the effective date • Execution of a Disposition and Development Agreement (DDA) between a developer and Metro • Parties determine they are unable to agree upon the selection of a developer after an extended solicitation.
Previous Board Action/Review	4/18/2022 - Development update to Board via e-mail 2/17/2022 - Development update to Board via e-mail 10/14/2021 - Development update to Board via e-mail 2/9/2021 - Board Approves of MOU with Lake Oswego & Metro
Strategic Plan Alignment	This funding aligns with the County's strategic priority to ensure safe, healthy, and secure communities by increasing the inventory of affordable housing units in Clackamas County.
Counsel Review	4/25/2022 - Andrew Naylor, County Counsel
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide brief explanation: Item is an IGA
Contact Person	Devin Ellin, Director of Housing Development, HACC 971-227-0472
Contract Number	IGA #TBD

BACKGROUND:

In 2021, Housing Authority of Clackamas County (HACC) entered into a non-binding memorandum of understanding (MOU) with Metro and the City of Lake Oswego (City) to explore the acquisition of land for the purpose of developing affordable housing. The City owns six tax lots at the intersection of Boones Ferry Road and West Sunset Drive in the City's Lake Grove neighborhood that are currently used for construction staging. The City has identified the roughly 1.4 acre Property as a suitable location for the development of approximately fifty (50) units of multi-family affordable housing.

Metro's Affordable Housing Bond Regional Property Acquisition Program acquires land for future affordable housing in areas of Clackamas County with access to high quality schools, grocery shopping, and transit, and provides gap funding to support the private creation of affordable housing on Metro properties.

Metro wishes to acquire the Lake Oswego Boones Ferry property from the City for said purposes. Metro's Housing Bond property acquisition and gap financing funds are only available to properties acquired and owned by Metro.

Coinciding with and conditioned upon entry into this IGA, the City and Metro will enter into an Intergovernmental Agreement for Purchase and Sale of the Property providing for the sale of the Property to the Metro Housing Bond program, for a purchase price equivalent to the appraised fair market value, subject to commercially reasonable conditions precedent to closing.

The purpose of this Intergovernmental Agreement is to determine a process, timelines and criteria for the parties to conduct solicitation and selection of an affordable housing developer with which Metro will commit to negotiate the disposition and development of the property. The developer selection process, timelines and criteria will be established by mutual consent of Metro, HACC and the City. The developer solicitation and selection will be followed by Metro's entry into Exclusive Negotiating Agreements and Disposition and Development Agreements with the selected developer, leading to construction of a Project consistent with the selection criteria.

The resulting affordable housing development project must proportionately contribute to HACC's Metro Affordable Housing Bond unit production goals for 30% Area Median Income ("AMI") units and family sized units. Approximately 40% of units supported with bond funds must house households earning 30% of AMI or less and half of Metro Affordable Housing Bond supported units must be two-bedroom units or larger.

With Housing Authority Board Approval, HACC will:

- Provide input and recommendations for the developer solicitation document and staff for the developer selection committee and collaborate with Metro and the City in good faith to develop a mutually agreeable solicitation document and process
- Participate together with Metro and the City in good faith in the Developer Solicitation and Selection process
- Be responsible for applying to Metro's Affordable Housing Bond Program for a Conceptual and Final funding commitment for the selected Project

- Be responsible for negotiating and entering into a funding agreement with selected developer and committing its Regional Bond funds

HACC's Contributions:

- In preparation for the RFQ/P, HACC will establish the amount of its allocation of Regional Affordable Housing Bond program funds it will make available to support affordable housing on the Property and will share its funding criteria and Project requirements consistent with its Local Implementation Strategy for inclusion in the development solicitation.
- It is expected that the \$7,150,000 all-in contribution from Clackamas County's portion of Metro's Affordable Housing Bond Regional Property Acquisition Program will be a sufficient allocation to support the project and aligns with Metro's per unit subsidy of \$143,000 per unit. However, HACC reserves the option to allocate additional subsidy to the project on an as-needed basis.

The Developer RFQ/P is anticipated to be released late 2022. Upon the selection of a developer, Metro will enter into an Exclusive Negotiating Agreement with the selected developer which will provide developer with site control for a period of time during which the developer will begin to design the Project and secure financing.

Metro will negotiate the terms of a disposition and development agreement with the selected developer, providing for the conveyance of the property to the selected developer at a reduced price, in return for, among other things, the construction of an approximately fifty (50) unit multi-family income restricted affordable housing Project on the Property.

ATTACHMENTS:

- IGA #TBD (Metro Number 936551)

RECOMMENDATION:

Staff recommends the Board approve the IGA between the Housing Authority of Clackamas County (HACC), Metro, and the City of Lake Oswego (City) to conduct a solicitation and selection process for awarding an affordable housing developer the Boones Ferry Project.

Respectfully submitted,

Rodney A. Cook

Rodney A. Cook, Director
Health, Housing and Human Services