

MEMORANDUM OF UNDERSTANDING

Housing Authority of Clackamas County City of Lake Oswego, and Metro

This Memorandum of Understanding (the "MOU") is entered into by and between Metro, a municipal corporation established pursuant to Oregon law and the Metro Charter ("Metro"), the City of Lake Oswego, a municipal corporation (the "City"), and the Housing Authority of Clackamas County ("HACC"), (collectively, "the Parties"). This MOU is effective as of the last date of execution set forth below (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 tax lots at the intersection of Boone's Ferry Road and West Sunset Drive legally described on Exhibit A attached hereto (the "Property"). The Property is roughly 1.4 acres in area and its zoning is predominantly WLG-OC, with portions zoned WLG-R.25 and WLM-RMU. The City is exploring the possibility of amending its comprehensive plan to change the zoning of the Property to support multi-family housing (the "Zone Change"). The City purchased the Property with Lake Oswego Redevelopment Agency (LORA) funds. If the Property is sold and developed for housing, the City will use the sale proceeds to repay LORA.

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 the 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 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 Local Implementation Strategy (the "LIS") for the Metro Housing Bond program. HACC expects to commit of a portion of its Metro Housing Bond allocation to development of affordable housing at the Property.

C. In support of HAAC's unit production targets, Metro's Affordable Housing Bond Regional Property Acquisition Program (the "Regional Program") acquires real property 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. Under the LIP IGA, Metro must make good faith efforts to coordinate and consult with HACC to ensure Metro's acquisition decisions support HACC in reaching its production targets. Metro's property acquisition and gap financing funds are only available to properties acquired by Metro.

D. The Parties now wish to enter into this non-binding MOU to set forth the expectations governing their cooperative pursuit of intersecting processes, including amendments to the City's Comprehensive Plan and Zoning, Property acquisition and disposition, and multi-family affordable housing project developer selection. The Parties anticipate that this MOU will result in a Zone Change to the Property supporting multi-family affordable housing, a binding agreement between Metro and the City governing Metro's acquisition of the Property from the City, a jointly conducted mutually

approved developer solicitation, and an Exclusive Negotiating Agreement between Metro and the selected developer, leading to a Disposition and Development Agreement between Metro and the selected developer governing the sale of the Property and requiring that a satisfactory affordable housing project be built upon it (the “Project”).

1. **Primary Objective of MOU.** To provide a process for the Parties to jointly conduct developer solicitation and selection (the “Developer Solicitation and Selection”), for the purposes of identifying an affordable housing developer with which Metro will commit to negotiate the disposition of the Property. The Developer Solicitation and Selection will be preceded by the City’s Zone Change and entry into an IGA between Metro and City for the acquisition of the Property, followed by acquisition due diligence and the conveyance of the Property to Metro.

2. **Acknowledged Requirements and Priorities:**

- 2.1 HACC requires a Project that proportionately contributes to its unit production goals for 30% AMI units and family sized units. On a portfolio basis, approximately 40% of units supported with bond funds will need to house households earning 30% of AMI or less and half of bond supported units will be two-bedrooms or larger.
- 2.2 HACC will advocate for a Project of a scale consistent with efficiency in financing, construction, and operations. To this end, it is expected that the anticipated Zone Change will allow for the construction of an affordable housing building of approximately 50 units or more.
- 2.3 HACC will advocate for the selection of a Project developer committed to the racial equity benchmarks set forth in its Local Implementation Strategy for construction contracting and property management.
- 2.4 Metro may only contribute Regional Program funds to Properties purchased by Metro.
- 2.5 The level of Metro’s Regional Program gap funding for a 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.
- 2.6 The City requires a Project designed and built to a standard of construction and quality of materials consistent with its local policies and community values.
- 2.7 The City may identify, through its outreach processes, other community priorities which it wants to include during the process of preparing the developer solicitation.
- 2.8 Developer and project selection will be determined by mutual consent of Metro, HAAC and the City.

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

- 3.1 Seek to amend its comprehensive plan and zoning on the property to increase its capacity for multi-family housing. Conceptual Timeline:
 - 3.1.1 January 2021: City conducts focus groups with stakeholders for rezoning
 - 3.1.2 February 2021: Community Meeting – informational prior to land use application
 - 3.1.3 March 2021: Submit land use application
 - 3.1.4 April 5, 2021: DLCD 35-day notice

- 3.1.5 May 10, 2021: Planning Commission public hearing
- 3.1.6 May 24, 2021: Planning Commission findings
- 3.1.7 June/July, 2021: City Council public hearing and findings
- 3.1.8 _____, 2021: Expiration of all applicable appeal periods
- 3.2 Negotiate in good faith with the intent of entering into an IGA with Metro governing the sale of the Property to Metro for appraised fair market value upon completion of the Zone Change.
- 3.3 After the conveyance of the Property to Metro, provide input and recommendations for the developer solicitation document and staff for the developer selection committee and cooperate with Metro and HACC in good faith to develop a mutually agreeable solicitation document and process as set forth in Section 7.
- 3.4 Participate together with Metro and HACC in good faith in the Developer Solicitation and Selection process as set forth in Section 8.
- 3.5 The City anticipates that it may elect to contribute financial support to the Project, subject to City Council approval, and will use best efforts to identify and provide City incentives, resources, and sources of support and financial subsidy for the Project.
- 4. **Metro Role and Responsibilities.** With the approval of its governing body, Metro will:
 - Provide input and support the City in amending its comprehensive plan and zoning to allow multifamily housing on the Property.
 - 4.1 Upon completion of the Zone Change, negotiate in good faith with the intent of entering into an 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 standards, for appraised fair market value. Upon entry into the IGA, perform due diligence and acquire Property from the City upon satisfaction of conditions precedent set forth in the IGA.
 - 4.2 Draft and issue the developer solicitation. Metro will collaborate with the City and HACC to ensure the solicitation reflects the needs and priorities of the Parties and to jointly establish a mutually agreeable timeline and process for the developer solicitation.
 - 4.3 Release a developer solicitation only with the agreement and support of the City and HACC MOU representatives.
 - 4.4 Convene the developer selection committee, which shall provide for balanced representation between HACC, Metro, and the City.
 - 4.5 Select a developer and Project concept only with the concurrence and support of the City and HACC MOU representatives.
 - 4.6 Following selection of a developer, Metro anticipates entering into an Exclusive Negotiating Agreement with the selected developer, which shall provide a period of time during which the developer will design the Project and secure financing. Upon further refinement of the Project, Metro anticipates entering into a DDA with the developer.

- 4.7 Metro anticipates committing Metro Affordable Housing Regional Property Acquisition Program gap funds to the Project in coordination with HACC and may transfer these gap funds to HACC so that they may be loaned to the developer via a single loan instrument.
- 4.8 Metro anticipates that it may elect to contribute further gap funding to the Project, in the form of Metro Transit Oriented Development program funds, subject to Project's satisfaction of Metro Transit Oriented Development program requirements and governing body approval.

5. Housing Authority of Clackamas County Role and Responsibilities.

- 5.1 Provide input and support the City in amending its comprehensive plan and zoning to allow multifamily housing on the Property.
- 5.2 Prior to Metro's issuance of the developer solicitation, HACC will communicate to Metro and the City the amount of its allocation of Regional Affordable Housing Bond program funds it intends to 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.
- 5.3 HACC will contribute staff to the developer selection committee and support the preparation of the developer solicitation.
- 5.4 HACC will be responsible for applying to Metro for a Conceptual and Final funding commitment for the selected Project as further described in the existing IGA between Metro and HACC governing the use of Regional Affordable Housing Bond funds.
- 5.5 HACC will be responsible for negotiating and entering into a funding agreement with selected developer, committing its Regional Bond funds, as necessary, to the Project.
- 5.6 Provide input and recommendations for the developer solicitation document and staff for the developer selection committee.
- 5.7 Cooperate with Metro and the City in good faith to develop a mutually agreeable solicitation document and process as set forth in Section 7.
- 5.8 Participate together with Metro and the City in good faith in the developer solicitation and selection process as set forth in Section 8.

6. Metro Purchase of City Property. Subject to appropriate and necessary governing body approvals, which approvals may be withheld at each governing body's sole discretion, Metro and the City anticipate negotiating and entering into an Intergovernmental Agreement ("IGA") providing for the purchase of the City Property by Metro for a price not to exceed its appraised fair market value, subject to Metro's ordinary and customary due diligence standards, with the closing of the purchase to occur after the date that the City's Zone Change becomes final and all applicable appeal periods have expired, and after a developer has been selected.

7. Preparation for Developer Solicitation and Selection.

- 7.1 The Parties will cooperate and negotiate in good faith to reach unanimous approval of the selection of Project concept and developer. To that end:

- 7.1.1 Each party will review provide input and approve the Developer Solicitation prior to release.
- 7.1.2 Each party will contribute staff to the developer selection committee.
- 7.1.3 Each party will agree to consensus decision making in establishing selection criteria and selecting the developer and development concept (if one party does not support the developer or concept selection, the selection will not move forward).
- 7.2 The City will provide the following in preparation for the RFQ/P:
 - 7.2.1 Statement of City's vision and aspirations for the Property
 - 7.2.2 Aspirational standard of design and construction and quality of materials consistent with its local policies and community values.
 - 7.2.3 Summary of incentives and resources available for the Project, if any.
 - 7.2.4 Existing due diligence materials on the property including, if any:
 - Phase I Environmental studies
 - Soil reports
 - surveys
 - Preliminary Title reports
- 7.3 Metro will provide the following in preparation for the RFQ/P:
 - 7.3.1 Metro Affordable Housing Bond Regional Acquisition Program goals and requirements for the Project.
- 7.4 HACC will provide the following in preparation for the RFQ/P:
 - 7.4.1 HACC will identify the amount of its allocation of Regional Affordable Housing Bond program funds it intends to 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.

8. **Developer Solicitation and Selection.** The Developer Solicitation and Selection will be conducted by the Parties in cooperation with a Review Committee, using a Request for Qualifications and Proposals ("RFQ/P") process.

- 8.1 RFQ /P. Metro will establish the RFQ/P 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 and the parameters set forth below. Metro will be responsible for administering the RFQ/P process and will pay for the administrative costs of developer solicitation.
- 8.2 Review Committee. The Parties 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.

8.3 Base RFQ /P Criteria. In addition to meeting any applicable Metro Affordable Housing Regional Acquisition Program criteria, HACC's Local Implementation Strategy the City Zoning and Development Code, and all applicable provisions of ORS 279A-C, the RFQ/P may, for example, include the following base criteria for evaluating proposals :

8.3.1 Experience. Proven, extensive, successful experience in designing, financing, constructing, and operating projects of similar type and scale.

8.3.2 Concept Design. The respondents shall provide the following information:

8.3.2.1 Program narrative describing the vision for the Property including anticipated approaches to identified Property opportunities and challenges including: parking, access, pedestrian right-of-ways, and neighboring uses.

8.3.2.2 Concept drawing on 11" by 17" sheet or smaller showing Property configuration (layout) and scale including: building programming, height, any outdoor spaces, publicly accessible plazas (if applicable), pedestrian pathways, and parking.

8.3.2.3 Program summary including: envisioned residential unit count and approximate building square feet, envisioned square feet of retail and/or commercial space, and envisioned number of regulated affordable units with income level and duration of income restrictions.

8.3.2.4 Oregon Housing and Community Services Preliminary Proforma

8.3.2.5 Feasibility. Proof of financial feasibility. The respondents shall provide the following information: preliminary sources and uses, 5-year operating proforma, development timeline, a one page narrative describing the basis for assumptions regarding rents, costs (including assumptions regarding exterior materials and interior levels of finish), and available sources, particularly bank loans, developer or investor equity, tax credits, or other grants and incentives.

8.4 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.

9. **Exclusive Negotiating Agreement.** Upon the selection of a successful developer as set forth in Section 8, Metro anticipates entering into an Exclusive Negotiating Agreement with the selected developer. Elements to be addressed by Metro and the developer in the ENA include:

9.1 Exclusive right to negotiate for a DDA with Metro

9.2 Construction and permanent financing

9.3 Metro Affordable Housing Bond Regional Property Acquisition Program provided incentives

- 9.4 Other state and local affordable housing project financing and incentives
- 9.5 Description of development program
- 9.6 Submission of permit application permit plan set, sources and uses, financing commitments and other due diligence
- 9.7 Predevelopment Schedule and performance deadlines
- 9.8 Community outreach process requirements
- 9.9 Term and expiration/termination provisions

During the term of the ENA, Metro will negotiate diligently and in good faith with the selected developer to reach agreement on the terms of the DDA. Metro will continue to consult with HACC and the City during the negotiation, to promote consistency with HACC's and the City's goals and priorities for the Project.

10. **Disposition and Development Agreement.** At the conclusion of the ENA process, Metro anticipates entering into the DDA to formalize Metro's commitment to convey the Property to the developer and provide support for the Project, including financial and other incentives. Metro anticipates that the terms of the DDA with developer will be consistent with the Metro Affordable Housing Regional Property Acquisition program parameters and Metro's ordinary and customary predevelopment property disposition parameters.

11. **Term.** This MOU will be effective for a period of three (3) years from the date of final signature, or until Metro enters into a DDA with the selected developer, whichever occurs first.

12. **Modification and Termination.** This MOU constitutes the entire arrangement among the parties and no alteration or modification of the terms of this MOU shall be valid unless contained in writing signed by all Parties. Any party may terminate their participation in this MOU by providing the other parties with thirty (30) days advance written notice. With notice of intention to terminate, the parties will meet promptly to discuss the reasons for the notice and to try to resolve their differences. The parties will attempt to settle differences informally and acknowledge a willingness to meet to resolve any new or ongoing differences, and to refer such differences to higher level management as appropriate.

13. **Project Staff.** The Parties will each designate a Project Manager to be primarily responsible for fulfilling the purposes of this MOU. Said Project Manager may be replaced by any party with written notice. The initial Project Management Committee shall be composed of the following:

- 13.1 Name, City of Lake Oswego
- 13.2 Name, Housing Authority of Clackamas County
- 11.3 Jonathan Williams, Metro TOD Program Staff

The Parties may assign other staff or consultants as needed.

14. **Non-Binding Expression of Intent.** THIS MOU IS A STATEMENT OF THE CURRENT INTENT OF THE PARTIES, DOES NOT CREATE A BINDING AGREEMENT FOR THE PURCHASE, SALE OR DEVELOPMENT OF REAL PROPERTY, AND MAY NOT BE RELIED UPON AS A BASIS FOR A CONTRACT BY ESTOPPEL OR SERVE AS THE BASIS FOR A CLAIM BASED ON DETRIMENTAL RELIANCE OR ANY OTHER THEORY. TO THE EXTENT THAT THIS MOU ANTICIPATES THE TRANSFER OF FUNDS, OR SERVICES, THE PARTIES WILL ENTER INTO THE APPROPRIATE LEGAL INSTRUMENT TO ACCOMPLISH SUCH TRANSFER.

THE PARTIES ACKNOWLEDGE THAT NO PARTY SHALL BE COMMITTED TO PURCHASE, CONVEY OR DEVELOP PROPERTY UNTIL AN IGA HAS BEEN NEGOTIATED, EXECUTED, DELIVERED, AND APPROVED BY THE GOVERNING BODIES OF THE PARTIES.

15. **No Other Arrangements.** The parties agree that this MOU supersedes all prior arrangements between the Parties and contains the entire understanding between the parties on its subject matter. The parties agree this MOU may only be modified in writing signed by all parties and that no verbal statements or conversations between the parties or their representatives, occurring either before or after the entry into this MOU, have any effect upon this MOU.

16. **Public Communications.** The parties will submit to each other for review and approval prior to distribution all public communications concerning the actions contemplated by this MOU, e.g., press releases or information provided to the media. All substantive discussions with public agencies having jurisdiction over the Property will be undertaken jointly by the parties and shall be subject to their mutual prior approval.

17. **Notices.** All notices required by or relating to this MOU or the Property will be in writing, and sent by email, personal delivery, by mail addressed to:

For City of Lake Oswego: Name, Title
 Address:
 Phone:
 Email:

For HACC: Name, Title
 Address:
 Phone:
 Email:

For Metro: Megan Gibb, Manager
 Metro Development Center
 600 NE Grand Ave.
 Portland, OR 97232
 Phone: (503) 797-1753
 Email: megan.gibb@oregonmetro.gov

18. **Counterparts and Electronic Signature.** This MOU may be executed in one or more counterparts all of which shall be considered one and the same instrument. An MOU executed and transferred by electronic signature shall be deemed duly executed.

19. **No ORS 190 Entity or Business Partnership.** Nothing in this MOU shall be construed to create an intergovernmental entity under ORS 190 nor any of the attributes or incidents of a partnership or joint venture under common law or ORS Chapters 67 and 70. No officer or employee of any party hereto has authority to act as an agent for any other party, nor make representations on its behalf

20. **DISCLAIMER OF CONSEQUENTIAL DAMAGES.** IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS MOU OR FOR ANY ACT OR FAILURE TO ACT RELATED

HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM SUCH PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

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

METRO

CITY OF LAKE OSWEGO

Name
Title
Date: _____

Elissa Gentler
Metro Planning Director
Date: _____

HOUSING AUTHORITY OF CLACKAMAS COUNTY

Name
Title
Date: _____

Exhibits:

- Exhibit A - Legal Description of Metro Property
- Exhibit B – Plans and Elevations

EXHIBIT A
Property Legal Description

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