



October 17, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Federal Subrecipient Grant Agreement with Habitat for Humanity Portland/Metro East for Pre-Construction Infrastructure at the West Lake Grove Townhomes. Grant value is \$800,000 for 1.5 years. Funding is through County-allocated American Rescue Plan Act Funds. No County General Funds are involved.

Previous Board Action/Review	Allocation approved at policy session on May 17, 2023 Briefed at Issues – October 15, 2024		
Performance Clackamas	1. Which indicator of success does this item affect? By 2025, 1,500 affordable housing units will be developed. These units will be stratified across Area Median Income (AMI) ranges as follows: 700 units at 61-110% AMI and 800 units at 0-60% AMI		
Counsel Review	Yes	Procurement Review	No
Contact Person	Nancy Bush	Contact Phone	503-655-8893

EXECUTIVE SUMMARY: Habitat for Humanity Portland/Metro East is currently constructing 23 townhomes, known as the West Lake Grove Townhomes, in Lake Oswego on Lower Boones Ferry Road between Upper Drive and Lower Drive. The townhomes will be in 3- or 4-bedroom configurations, with 6 different floorplans, ranging between 1200-1500 square feet, plus a garage. In keeping with the organization’s goals of building affordable housing, 16 of the homes are intended to be sold to households making 35-60% of Area Median Income, with all homes to be sold to households making no more than 80% of Area Median Income. To ensure the homes remain affordable, the land will be held in a community land trust with Proud Ground, with buyers agreeing to a shared equity model to allow for wealth building through a future sale while preserving affordability for future buyers.

Habitat for Humanity has approached Clackamas County and the City of Lake Oswego seeking grants of \$800,000 from each entity, to match the organization’s funding of \$1,600,000 toward the project’s infrastructure costs of approximately \$3,200,000. These costs include infrastructure within the project, including utilities, a private road within the development, and other essential services such as street lighting, and infrastructure

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improvements in the surrounding area, such as traffic lights, street signage, stormwater management, retaining walls, and construction of a new local residential road. The enclosed agreement includes a declaration of restrictive covenants that protects the County's interests in maintaining the project as affordable housing for the purposes of providing this grant funding. The Board approved the allocation of \$800,000 in American Rescue Plan Act funding on May 17, 2023, and staff have negotiated the enclosed agreement with Habitat for Humanity for the Board's approval. The property acquisition and actual construction costs have been funded through other means, such as Oregon legislative allocations of American Rescue Plan Act funds, bank financing, and Oregon Local Innovation and Fast Track Housing Program financing and are not funded through this grant agreement.

RECOMMENDATION: Staff recommends the Board approve the enclosed Federal Subrecipient Grant Agreement and authorize the Chair to sign the agreement and the enclosed Declaration of Restrictive Covenants (Exhibit J) on behalf of the Board.

Respectfully submitted,

A handwritten signature in blue ink that reads "Gary Schmidt". The signature is written in a cursive, flowing style.

Gary Schmidt
County Administrator

**CLACKAMAS COUNTY, OREGON
FEDERAL SUBRECIPIENT GRANT AGREEMENT 24-022**

Program Name: **HABITAT FOR HUMANITY PORTLAND/METRO EAST – ARPA Affordable Housing**

This Agreement is between **Clackamas County**, Oregon, acting by and through its **Department of Administration** (“COUNTY”), and **HABITAT FOR HUMANITY PORTLAND/METRO EAST** (“SUBRECIPIENT”), an Oregon Nonprofit Corporation.

Clackamas County Data	
Grant Accountant: Bouavieng Bounnam	Program Manager: Christopher Hawkins
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 (503) 742-5422 bbounnam@clackamas.us	Clackamas County – Administration 2051 Kaen Road Oregon City, OR 97045 (503) 894-0077 chawkins@clackamas.or.us
Subrecipient Data	
Finance/Fiscal Representative:	Program Representative:
Yuko Spofford 1478 NE Killingsworth St. Portland, OR 97211 (P. O. Box #11527, Portland, OR 97211) (503) 287-9529 Yuko.Spofford@habitatportlandregion.org	Joseph Gavrilovich 1478 NE Killingsworth St. Portland, OR 97211 (P. O. Box #11527, Portland, OR 97211) (503) 287-9529 joseph.gavrilovich@habitatportlandregion.org
UEI: JCR7SBLLXM43	

RECITALS

1. The American Rescue Plan Act of 2021 (ARPA) provides State and Local Fiscal Recovery Funds to address the public health and economic impacts of the COVID-19 pandemic.
2. COUNTY has identified a critical need for affordable housing to support low- and moderate-income residents affected by the economic downturn caused by the pandemic.
3. COUNTY aims to utilize ARPA funds to support affordable housing initiatives that will increase the availability of affordable units, stabilize housing for vulnerable populations, and promote long-term economic recovery.
4. SUBRECIPIENT has been selected to receive a grant to implement the affordable housing project in accordance with the goals of ARPA and the specific needs identified within the community.
5. COUNTY’s ARPA funds will be used to cover approximately one quarter of the total cost for pre-construction infrastructure installations for the West Lake Grove townhomes that are in development on a 1.92-acre property located at 16858 Boones Ferry Road in Lake Oswego, on the intersection of Boone’s Ferry Road and Upper Drive. The site has been approved for 23 townhomes, and infrastructure installation includes water, sewer, utilities, and street-lighting installments; foundations; permitting fees; and transportation upgrades in the area including traffic lights, signs, stormwater, retaining walls, and road upgrades.
6. The acquisition of this property was funded with the support of the State’s Local Community Investments through legislative member’s ARPA disbursement plans. Financing for the

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development has been secured through bank financing with Chase Bank, and Local Innovation and Fast Track Housing Program (LIFT) financing from the State of Oregon.

7. SUBRECIPIENT's goal is to offer long-term affordability for a minimum of 99 years through a shared equity or land trust model. This is structured with Proud Ground through a partnership MOU. Through this partnership, the land on which this development sits will be held in a community land trust to ensure long-term affordability beyond the 60-year requirement. The homes will be sold at a below-market, affordable base price. Buyers agree to a shared equity formula, which allows families to build some wealth while preserving each home's affordability for future buyers.
8. SUBRECIPIENT's goal is to sell 16 of the homes to households making 35-60% AMI. SUBRECIPIENT is committed to sell all homes to households making no more than 80% AMI.
9. In compliance with SLFRF expenditure category 2.15 Affordable Housing, SUBRECIPIENT will use provided funds to pay for roads, curbs, sidewalks, foundations, dry utilities and other site development costs that are needed before the construction of the buildings begin, and to address COUNTY's concerns with negative economic impacts deriving from the COVID-19 pandemic and its after-effects.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement (this "**Agreement**") the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and will terminate on March 31, 2025, unless sooner terminated or extended pursuant to the terms hereof. Eligible expenses for this Agreement may be charged during the period beginning **October 1, 2023** and expiring **March 31, 2025**, subject to additional restrictions set forth below and to the exhibits attached hereto, and unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Exhibit A, Subrecipient Statement of Program Objectives & Performance Reporting. SUBRECIPIENT agrees to carry out the Program in accordance with the terms and conditions of this Agreement and according to SUBRECIPIENT scope of work in Exhibit A.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall perform all activities and programs in with the requirements of the U.S. Department of the Treasury ("**Treasury**") that is the source of this federal grant funding, in addition to compliance with requirements of Section 603(c) of the Social Security Act, Treasury's regulations implementing that section, and supplementary guidance issued by the Treasury on these funds, including but not limited to the State and Local Fiscal Recovery Funds ("**SLFRF**") Final Rule, and other required information in the Exhibits to this Agreement, which are attached to and made a part of this Agreement by this reference. SUBRECIPIENT shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable local, State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein. SUBRECIPIENT agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary to comply with applicable State and Federal funding requirements.
4. **Grant Funds.** COUNTY's funding for this Agreement is the State and Local Fiscal Recovery Funds (SLFRF; Assistance Listing Number ["ALN"] #: 21.027; Federal Award #: 1505-0271) issued to COUNTY by the United States Treasury. The maximum, not to exceed, grant amount COUNTY will pay is **\$800,000**. This is a cost reimbursement grant award and is conditional upon compliance with the terms herein. Disbursements will be made in accordance with the schedule and requirements contained in Exhibit D, Reimbursement Request. Failure to comply with the terms of this Agreement may result in County pursuing any right or remedy available to it at law, in equity, or under this Agreement including, but not limited to, withholding of payment. Funds advanced and unspent must

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be returned to COUNTY within 30 days of the end of termination period in Section 1 if award conditions are not met.

5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to COUNTY in writing at least forty-five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term for one or more of the following reasons:
 - a. At COUNTY's discretion, upon thirty (30) days' advance written notice to SUBRECIPIENT;
 - b. If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of Agreement funding for preconstruction work for the affordable project is no longer allowable or appropriate or the project is no longer eligible for the Agreement funding identified in this Agreement from the planned funding source(s);
 - c. Written notice provided by COUNTY resulting from material failure by SUBRECIPIENT to comply with any term of this Agreement;
 - d. Mutual agreement by COUNTY and SUBRECIPIENT;
 - e. Written notice provided by COUNTY that the US Treasury has determined funds are no longer available for this purpose; or
 - f. Written notice provided by COUNTY that it lacks sufficient funds, as determined by COUNTY in its sole discretion, to continue to perform under this Agreement.

Upon completion of improvements or upon termination of this Agreement, any unexpended balances shall remain with COUNTY.

7. **Effect of Termination.** The expiration or termination of this Agreement, for any reason, shall not release SUBRECIPIENT from any obligation or liability to COUNTY, or any requirement or obligation that:
 - a. Has already accrued hereunder;
 - b. Comes into effect due to the expiration or termination of the Agreement; or
 - c. Otherwise survives the expiration or termination of this Agreement.

Following the termination of this Agreement, SUBRECIPIENT shall promptly identify all unexpended funds and return all unexpended funds to COUNTY. Unexpended funds are those funds received by SUBRECIPIENT under this Agreement that (i) have not been spent or expended in accordance with the terms of this Agreement; and (ii) are not required to pay allowable costs or expenses that will become due and payable as a result of the termination of this Agreement.

8. **Funds Available and Authorized.** COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 8.
10. **Federal and State Procurement Standards**
 - a) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements must receive prior written approval from COUNTY in addition to any

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other approvals required by law applicable to SUBRECIPIENT. Justification for sole-source procurement should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.

- b) COUNTY's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall have and use documented procurement procedures consistent with State and local procurement rules under the Oregon Public Contracting Code and applicable Local Contract Review Board rules, which are incorporated by reference herein.
- c) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals ("RFP") for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- d) **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.** SUBRECIPIENT shall take all necessary affirmative steps to assure that small & minority businesses, women's business enterprises, and labor surplus area firms are used when possible when contracting for services or soliciting for potential resources, per 2 CFR 200.321.

11. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY's next fiscal year, COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify, defend, and hold COUNTY, and its elected officials, officers, employees, and agents, harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to (1) SUBRECIPIENT's negligent or willful acts or those of its employees, agents, or those under SUBRECIPIENT's control; or (2) SUBRECIPIENT's acts or omissions in performing under this Agreement including, but not limited to, any claim by State or Federal funding sources that SUBRECIPIENT used funds for an ineligible purpose. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of COUNTY.
- d) **Independent Status.** SUBRECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of COUNTY and undertakes this work independent from the control and direction of COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
- e) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as

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Federal Express), (3) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.

- f) **Governing Law.** This Agreement is made in the State of Oregon and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
 - g) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
 - h) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same Agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
 - i) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third-party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
 - j) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
 - k) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.
 - l) **No Attorney Fees.** 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.
 - m) **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.
 - n) **Survival.** All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 3, 7, 11 (a), (b), (c), (f), (g), (i), (j), (k), (l), and (m), 12, and all other rights and obligations which by their context are intended to survive.
 - o) **Federal Interest:** This project involves the use of federal funds, and as such, there is a federal interest in the property. The SUBRECIPIENT agrees to comply with all federal regulations and requirements related to the federal interest. This includes registering the Notice of Federal Interest with the appropriate entity for the County; maintaining the property for its intended use; and adhering to any conditions set forth by the federal awarding agency.
12. **Recording Requirement.** SUBRECIPIENT shall execute and record, or cause to be recorded, the Restrictive Covenants attached hereto as Exhibit J within thirty (30) days after execution of this Agreement. SUBRECIPIENT shall provide County proof of recordation of the Restrictive Covenants, together with a copy of a title insurance policy showing that (1) SUBRECIPIENT is the sole title holder of the Property; and (2) title to the Property is free and clear of all liens and encumbrances other than the Restrictive Covenants and those encumbrances specifically approved in writing by COUNTY. The Restrictive Covenant shall survive termination of this Agreement.

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13. Exhibits and Attachments.

This Agreement is comprised of the following exhibits and attachments:

- Exhibit A: SUBRECIPIENT Scope of Work & Performance Reporting
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Required Financial Reporting and Payment Request
- Exhibit E: General Administrative and Federal Terms and Conditions
- Exhibit F: Insurance Requirements
- Exhibit G: Final Financial Report
- Exhibit H: 2 CFR 200.332(a) Required Information
- Exhibit I: SUBRECIPIENT's approved proposal
- Exhibit J: County Declaration of Restrictive Covenants

(Signature Page Follows)

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SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

CLACKAMAS COUNTY

HABITAT FOR HUMANITY PORTLAND/METRO EAST

By: _____

Signed by:
By: Steve Messinetti
C87F53A15BD74E1...

Its: Chair, Board of County Commissioners

Its: **President and CEO**

Dated: _____

Dated: 9/25/2024

Approved to Form

By: 
County Counsel

Dated: 09/26/2024

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EXHIBIT A
SUBRECIPIENT SCOPE OF WORK AND PERFORMANCE REPORTING

PROGRAM NAME: State and Local Fiscal Recovery Funds (SLFRF) American Rescue Plan Act, ALN # 21.027	AGREEMENT No. 24-022
SUBRECIPIENT: HABITAT FOR HUMANITY PORTLAND/METRO EAST	

Program Objectives

SUBRECIPIENT’s project is described in Exhibit I, SUBRECIPIENT’s approved proposal.

Performance Standards

SUBRECIPIENT is responsible for compliance with the applicable terms and conditions in the SLFRF Final Rule published by the United States Treasury and 2 CFR 200 (the Uniform Guidance) in the implementation of this Project.

Reporting Requirements

SUBRECIPIENT will provide updates on the pre-construction activities funded in this Agreement on a quarterly basis. Reporting will be provided on SUBRECIPIENT letterhead, reference the information provided in the table header to this Exhibit A, above, and include:

1. Name of Contractor(s) engaged in the project
2. Estimated percentage of project completed
3. Estimated date of project completion
4. Total current project estimated cost to include known cost overruns
5. Narrative description of project progress
 - a. Narrative should include any anticipated barriers to completion (supply chain issues, contractor availability, permitting or other delays)
 - b. If date in #3 has changed from previous reports to COUNTY, an explanation as to the date change should be provided.
 - c. If amount in #4 has changed from previous reports to COUNTY, an explanation as to the total estimated cost change should be provided.
6. For FINAL report only
 - a. Timeline and expectations for transitioning to the construction phase and anticipated number of affordable housing units.

Program reports shall be submitted to Christopher Hawkins at chawkins@clackamas.us.

Reporting submission deadlines are as follows:

January 5, 2024

April 5, 2024

July 5, 2024

October 5, 2024

January 5, 2025

April 5, 2025 (FINAL)

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If pre-construction work cannot be completed by the end of the program period (March 31, 2025), SUBRECIPIENT must request a no-cost extension from COUNTY as soon as the delays are known by SUBRECIPIENT. COUNTY may, in its sole discretion, agree to extend this Agreement to account for an extended pre-construction completion date. All funds provided under this Agreement must be obligated by December 31, 2024, and spent by December 31, 2026. Quarterly reporting will be extended by COUNTY as necessary if a no-cost extension is issued.

Significant Developments

SUBRECIPIENT will notify COUNTY Program Manager if events with significant impact on pre-construction activities occur between scheduled reporting periods. Such impacts can include:

- Problems, delays, or adverse conditions which will materially impair the ability of SUBRECIPIENT to meet the objectives of this Agreement and the SLFRF program. A disclosure by SUBRECIPIENT shall include a statement of the action taken or contemplated in light of the significant impact and any assistance needed from COUNTY to resolve the situation.
- Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

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EXHIBIT B
SUBRECIPIENT Program Budget

PROGRAM NAME: State and Local Fiscal Recovery Funds (SLFRF) American Rescue Plan Act, ALN # 21.027	AGREEMENT No. 24-022
SUBRECIPIENT: HABITAT FOR HUMANITY PORTLAND/METRO EAST	

SUBRECIPIENT will use all provided funds for pre-construction costs related to the project including but not limited to: water, sewer, utilities, and street-lighting installments; foundations; permitting fees; and transportation upgrades in the area including traffic lights, signs, stormwater, retaining walls, road upgrades, and other site development costs that are needed before the construction of the buildings begin. All costs shall be documented through contractor invoices payable by SUBRECIPIENT.

Funds Provided: **\$800,000**

Habitat's Lake Oswego Infrastructure Budget	Expense
General Conditions	\$118,123
Erosion Control (EC)	\$52,346
Landscaping Allowance	\$134,247
Traffic Signal	\$167,000
Retaining Walls	\$120,320
On-Site Embankment/Excavation	\$160,736
Street Improvements (Local Residential)	\$170,839
Street Improvements (Private Drive)	\$11,231
Street Signs and Markings	\$18,650
Storm Improvements (On-Site)	\$139,970
Storm Improvements (Off-Site)	\$23,386
Storm Improvements (Water Quality & Detention)	\$149,043
Sanitary Improvements	\$97,265
Waterline Improvements	\$150,205
Franchise Utilities	\$182,100
Development Review	\$34,746
Building Structural Permits	\$76,818
Building -- Trades	\$27,600
SDC Parks and Recreation	\$319,242
SDC Sanitary Sewer	\$70,196
SDC Transportation	\$49,290
SDC Surface Water	\$3,674
SDC Water	\$192,832
DEQ Permit	\$15,350
Erosion Control Fee	\$1,500
Water Meter Fee	\$18,492
Architectural Plan Review	\$170,000
Final Development Plan	\$5,000
Final Plat Review and Recording	\$20,500
Civil Engineering	\$173,500
Security (Site-Fencing)	\$4,350
Temporary Facilities	\$3,600
Insurance and Legal Service Fees	\$95,815
Project Contingency (10%)	\$297,796
TOTAL SITE DEVELOPMENT COSTS:	\$3,275,762

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EXHIBIT C:
CONGRESSIONAL LOBBYING CERTIFICATE

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions[as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Authorized Representative certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Organization understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Habitat for Humanity Portland/Metro East	West Lake Grove Townhomes
Organization Name	Award Number or Project Name
Steve Messinetti, President and CEO	
Name and Title of Authorized Representative	
<div style="display: flex; align-items: center;"> <div style="margin-right: 10px; font-size: small;">Signed by:</div> <div style="font-family: cursive; font-size: 1.2em;">Steve Messinetti</div> </div> <div style="font-size: x-small; margin-top: 5px;">C87F53A15BD74E1...</div>	<div style="font-size: 1.2em;">9/25/2024</div> <div style="margin-top: 10px;">Date</div>

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EXHIBIT D
REQUIRED FINANCIAL REPORTING AND PAYMENT REQUEST

PROGRAM NAME: State and Local Fiscal Recovery Funds (SLFRF) American Rescue Plan Act, ALN # 21.027	AGREEMENT No. 24-022
SUBRECIPIENT: HABITAT FOR HUMANITY PORTLAND/METRO EAST	

SUBRECIPIENT will receive grant funds on a reimbursement basis.

Grant funds will be released to SUBRECIPIENT via the following processes:

1. SUBRECIPIENT receives contractor invoices for costs eligible under this award.
2. SUBRECIPIENT reviews and approves invoices.
3. SUBRECIPIENT submits payment request to COUNTY with complete contractor invoices. Payment request may be for any amount (up to the maximum award) for which SUBRECIPIENT has eligible contractor invoices. Each invoice must contain or be accompanied by a description of the work performed.
4. SUBRECIPIENT will receive approved reimbursement amount and will pay CONTRACTOR for expenses incurred.
5. SUBRECIPIENT request for payment must be submitted on SUBRECIPIENT letterhead, dated, assigned an invoice number generated by SUBRECIPIENT, refer to subrecipient agreement 24-022, include "State and Local Fiscal Recovery Fund ("SLFRF") Expenditure Category: 2.15 – Affordable Housing," include a description of the work performed and list of supporting attachments, be signed by an authorized representative of SUBRECIPIENT with name and title printed, and include the following certification language on the invoice:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).

If this process results in multiple requests for payment (up to the award maximum), SUBRECIPIENT will include a running total of amounts previously requested (including invoice numbers), current request, and balance remaining.

The County reserves the right to review and approve or reject any submitted invoice at its discretion to ensure compliance with the project scope and funding requirements. Invoices deemed inappropriate or unsupported may not be reimbursed.

The County retains the right to audit all financial records and inspect the project site to verify the proper use of funds and adherence to project guidelines.

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EXHIBIT E
General Administrative and Federal Terms & Conditions

14. Federal Funds

- a) This Agreement is funded in part by federal funds. By signing this Agreement, SUBRECIPIENT certifies neither it nor its employees, contractors, subcontractors, or subrecipients who will perform the Program activities described herein are currently employed by an agency or department of the federal government.
- b) COUNTY has determined:
 - Entity is a subrecipient Entity is a contractor Not applicable
- c) Assistance Listing Number of federal funds paid through this Agreement: 21.027

15. Administrative Requirements. SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:

- a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
- b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or “deferred” until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are “earned.” All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to COUNTY within 15 days.
- c) **Change in Key Personnel.** SUBRECIPIENT is required to notify COUNTY, in writing, whenever there is a change in SUBRECIPIENT key administrative or programmatic personnel and the reason for the change. Key personnel include but are not limited to: Executive Director, Finance Director, Program Manager, Bookkeeper, or any equivalent to these positions within the organization.
- d) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
- e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. At no time may budget modification change the scope of the original grant application or Agreement.
- h) **Indirect Cost Recovery.** SUBRECIPIENT will not request, and forgoes indirect cost recovery on this award.

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- i) **Payment.** SUBRECIPIENT must submit requests for payment according to the processes outlined in Exhibit D: Required Financial Reporting and Payment Request.
- j) **Performance Reporting.** SUBRECIPIENT shall comply with reporting requirements as specified in Exhibit A.
- k) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit payment requests as required in Exhibit D: Required Financial Reporting and Payment Request.
- l) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.344—Closeout. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial, performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than the date outlined in Exhibit A: Subrecipient Scope of Work and Performance Reporting.
- m) **Unique Entity Identifier and Contractor Status.** SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database using its Unique Entity Identifier (“UEI”), located at <http://www.sam.gov>.
- n) **Suspension and Debarment.** SUBRECIPIENT shall comply with 2 CFR Part 180. These rules restrict subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- o) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U.S.C. 1352. In addition, the SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (3) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- p) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (“FAC”) within 9 months from SUBRECIPIENT’s fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, SUBRECIPIENT will also submit a copy of the audit to COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from SUBRECIPIENT’s fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- q) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.332. COUNTY, the Federal government, and their duly authorized representatives shall have access

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to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY’s discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.

- r) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years from the end of program date, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.334-338.
- s) **Certification of Compliance with Grant Documents.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for the State and Local Fiscal Recovery Funds Final Rule, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as COUNTY, under those grant documents.
- t) SUBRECIPIENT is responsible for compliance with Section 503 of the Social Security Act, regulations adopted by Treasury pursuant to Section 603(f) of the Act, and the SLFRF Final Rule, published at the U.S. Treasury’s website (as amended, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>).
- u) **Real Property.** SUBRECIPIENT is required to comply with 2 CFR 200.311. Real property acquired or improved under this Agreement will be used for its originally authorized purpose as long as it is needed for that purpose. When property is no longer needed for the originally authorized purpose, SUBRECIPIENT will obtain disposition instructions from COUNTY prior to disposition or encumbrance of SUBRECIPIENT’s title to the property. Disposition will occur in accordance with one of the three disposition alternatives set forth in 2 CFR 200.311, as determined by COUNTY in its sole discretion . This provision will expressly survive termination of the Agreement.
- v) **Federal Interest.** The SUBRECIPIENT acknowledges that the use of federal funds establishes a federal interest in the property. The property must be maintained and used for the purposes outlined in the grant agreement for the duration of its useful life or until the federal interest is formally released. SUBRECIPIENT shall ensure that all property records reflect the federal interest, including filing a Notice of Federal Interest (NFI) where applicable. Any encumbrance on the property, such as liens or additional financing, must be disclosed to and approved by the federal awarding agency. In the event that the property is no longer needed for its intended purpose, the SUBRECIPIENT must seek disposition instructions from the federal awarding agency and comply with all federal regulations regarding the disposition of property.

16. Default

- a) **Subrecipient’s Default.** SUBRECIPIENT will be in default under this Agreement upon the occurrence of the following:
 - a. SUBRECIPIENT fails to use the grant funds for eligible purposes described in Exhibit A;
 - b. SUBRECIPIENT fails to complete the project by March 31, 2025 and no extension to this Agreement has been approved by COUNTY;
 - c. SUBRECIPIENT fails to timely record the Restrictive Covenants set forth in Section 12 of this Agreement;
 - d. Any representation, warranty or statement made by SUBRECIPIENT in this Agreement or in any documents or reports relied upon by COUNTY to measure the Program, the

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- expenditure of grant funds or the performance by SUBRECIPIENT is untrue in any material respect when made;
 - e. SUBRECIPIENT fails to use the property for eligible purposes described in this Agreement and Exhibit J;
 - f. After thirty (30) days' written notice with an opportunity to cure, SUBRECIPIENT fails to comply with any term or condition set forth in this Agreement and its exhibits including, but not limited to Exhibit J;
 - g. A petition, proceeding, or case is filed by or against SUBRECIPIENT under federal or state bankruptcy, insolvency, receivership, or other law.
- b) **County's Default.** COUNTY will be in default under this Agreement if, after thirty (30) days' notice and opportunity to cure, COUNTY fails to perform a material obligation under this Agreement provided, however, that failure to disburse grant funds due to lack of appropriation shall not constitute a default of COUNTY.

17. Remedies

- a) **County's Remedies.** In the event of SUBRECIPIENT's default, COUNTY may, at its option, pursue any or all remedies available to it under this Agreement, at law, or in equity including, but not limited to: (1) withholding SUBRECIPIENT grant funds until compliance is met; (2) reclaiming grant funds in the case of omissions or misrepresentations in financial or programmatic reporting; (3) requiring repayment of any funds used by SUBRECIPIENT in violation of this Agreement; (4) termination of this Agreement; (5) declaring SUBRECIPIENT ineligible for receipt of future awards from COUNTY; (6) initiation of an action or proceeding for damages, declaratory, or injunctive relief; and/or (7) in the event the project is not completed by March 31, 2025, and no extension to the Agreement has been approved by COUNTY, requiring SUBRECIPIENT to repay all funds issued under this Agreement.
- b) **Subrecipient's Remedies:** In the event COUNTY is in default, and whether or not SUBRECIPIENT elects to terminate this Agreement, SUBRECIPIENT's sole remedy for COUNTY's default, subject to the limits of applicable law or in this Agreement, is reimbursement for eligible costs incurred in accordance with this Agreement, less any claims COUNTY may have against SUBRECIPIENT. In no event will COUNTY be liable to SUBRECIPIENT for expenses related to termination of this Agreement or for any indirect, incidental, consequential or special damages.

18. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.
- b) **Rights to Inventions Made Under a Contract or Agreement.** SUBRECIPIENT agrees that contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any further implementing regulations issued by the U.S. Treasury Department.

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- c) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.
- d) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to this Agreement.
- e) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request COUNTY to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. COUNTY shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- f) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.1) acquired by SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (including those set forth in 2 CFR 200.303(e)) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- g) **Mileage reimbursement.** Mileage reimbursement is not provided through this award.
- h) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
- Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
 - Procure a commercial sex act during the period of time the award is in effect; or
 - Used forced labor in the performance of the Agreement or subaward under this Agreement.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement.

EXHIBIT F
SUBRECIPIENT INSURANCE REQUIREMENTS

During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below, and require the same insurance of subcontractors:

1) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.

2) **Commercial General Liability.**

Required by COUNTY NOT Required by COUNTY

SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, elected officials, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

3) **Commercial Automobile Liability.**

Required by COUNTY NOT Required by COUNTY

SUBRECIPIENT shall obtain at SUBRECIPIENT expense and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000, or SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of the agreement, Personal auto coverage. The limits shall be no less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage.

4) **Professional Liability.**

Required by COUNTY NOT Required by COUNTY

SUBRECIPIENT shall obtain and furnish COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, elected officials and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.

5) **Abuse and Molestation Clause.**

Required by COUNTY NOT Required by COUNTY

As part of the Commercial General Liability policy, SUBRECIPIENT shall obtain Abuse and Molestation coverage in a form and with coverage satisfactory to COUNTY covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person

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for whom SUBRECIPIENT is responsible including but not limited to SUBRECIPIENT and SUBRECIPIENT's employees and volunteers. Policy endorsement's definition of an insured shall include SUBRECIPIENT, and SUBRECIPIENT's employees and volunteer. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000.

- 6) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, elected officials, officers, and employees" as an additional insured.
- 7) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.
- 8) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 9) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. COUNTY and its, elected officials, employees and officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
- 10) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
- 11) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
- 12) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.

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Program Name: ARPA Affordable Housing	Agreement #: 24-022
Federal Award #: 1505-0271	Date of Submission: XX/XX/XX
Subrecipient: HABITAT FOR HUMANITY PORTLAND/METRO EAST	
Has Subrecipient submitted all requests for reimbursement? Y/N	
Has Subrecipient met all programmatic closeout requirements? Y/N	

Exhibit G: Final Financial Report

Report of Funds received, expended, and reported as match (if applicable) under this Agreement

Total Federal Funds <u>authorized</u> on this agreement:	\$800,000
Total Federal Funds <u>requested</u> for reimbursement on this agreement:	
Total Federal Funds <u>received</u> on this agreement:	
Balance of unexpended Federal Funds (Line 1 minus Line 3):	

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Subrecipient’s Certifying Official (printed): _____

INFORMATION ONLY

Subrecipient’s Certifying Official (signature): _____

Subrecipient’s Certifying Official’s title: _____

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EXHIBIT H
2 CFR 200.332(a) REQUIRED INFORMATION

Federal award identification	
SUBRECIPIENT Name:	HABITAT FOR HUMANITY PORTLAND/METRO EAST
SUBRECIPIENT Unique Entity Identifier:	JCR7SBLLXM43
Federal Award Identification Number (FAIN):	1505-0271
Federal award date:	May, 2021
Period of Performance (This Agreement):	October 1, 2023 - March 31, 2025
Budget Period (This Agreement):	October 1, 2023 - March 31, 2025
Total amount of all federal funds obligated by this action:	\$800,000
Total amount of all federal funds obligated to SUBRECIPIENT during the current fiscal year:	\$800,000
Total amount of federal award committed to SUBRECIPIENT:	\$800,000
Pass-through entity identifying number:	24-022
Name of pass-through entity:	Clackamas County
Contact information for awarding official of the pass-through entity:	Christopher Hawkins chawkins@clackamas.us
Federal awarding agency:	United States Treasury
Federal award program name:	ARPA State and Local Fiscal Recovery Funds
Is Award for Research and Development?	No
Assistance Listing Number (ALN) & Title:	21.027
SUBRECIPIENT indirect cost rate on this Agreement:	SUBRECIPIENT will not request, and forgoes indirect cost recovery on this award.

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EXHIBIT I: SUBRECIPIENT'S APPROVED PROPOSAL

Habitat for Humanity Lake Oswego Proposal



October 26th, 2021

To: Clackamas County Board of Commissioners + Lake Oswego City Council

Thank you for the opportunity to present Habitat's vision for expanding affordable homeownership in our region. We appreciate the interest and attention that your governments are giving to the issue of housing.

While there are many affordable housing organizations in our region, three area bond measures, and massive budgets for publicly subsidized rentals—there is relatively little being done to address the severe lack of affordable homeownership opportunities in our communities. And as bad as this inequity is, it is disproportionately worse for People of Color seeking to become first-time homebuyers. Despite this, Habitat's model continues to develop a new stock of permanently affordable and sustainable homeownership units with those earning a low-income. Working across the region, we build not only where it is less expensive to do so, we are also advancing projects that are rooted in high-opportunity areas with higher expenses.

One such community is being developed in Lake Oswego and has the opportunity to become the first permanently affordable homeownership community in the City's history. Working with City staff, Proud Ground, and a property owner, Habitat is under contract to purchase a 1.92-acre property from a supporter of affordable housing. The property is located at the intersection of Boones Ferry Road and Upper Drive and has been approved for 23 townhomes. The land is perfectly suited for long-term ownership—close to great schools, transportation, shopping and services, and near high-opportunity employment centers.

Habitat has already completed many of the pre-purchase requirements including a third-party appraisal and has conducted a Phase 1 Environmental Review. Now that we are under contract to purchase the land, we are awaiting a funding agreement with

the State of Oregon for a land-acquisition grant from the offices of Senator Rob Wagner and Representative Andrea Salinas. Additionally, we plan to request LIFT funding from the State to help drive the deep subsidy required to generate this project's affordability.

In the meantime, we are now looking for funding to help us install the necessary infrastructure items associated with developing the land. Given its high-opportunity location, unique topography, and broad market increases in building materials and labor, Habitat needs a higher-than-average subsidy to ensure affordability of this development. The projected budget for installing the build's infrastructure is estimated at \$3,200,000. This includes water, sewer, utilities, and street-lighting installments and permitting fees. Additionally, it covers transportation upgrades in the area including traffic lights, signs, stormwater, retaining walls, and a new road. Attached to this request is a proforma budget with more details.

To help us turn this property into a deeply affordable homeownership community, we are requesting a one-time ARPA allocation of \$800,000 from Clackamas County and \$800,000 from the City of Lake Oswego. Combined with a matching \$1,600,000 from Habitat, this would cover the entirety of the neighborhood's infrastructure installations. Together, we can turn an empty lot into a productive source of wealth from which the local economy will permanently benefit.

Habitat for Humanity has been working to support first-time homeownership for over 40 years. We are developing this community because we know that having a regional footprint of affordable for-sale homes supports local economies, eases traffic congestion, and generates racial equality. This development will also have a permanent affordability component, ensuring these homes remain affordable to future generations of first-time buyers earning a low-income. We know that building wealth is the single most effective way to achieve equity in our society. And time and again we see that the most effective way to build wealth is through homeownership. Together, we can make key investments that will pay dividends far beyond our lifetimes.

In grateful partnership,



Steve Messinetii
President & CEO
Habitat for Humanity Portland Region

Habitat's Lake Oswego Infrastructure Budget	Expense
General Conditions	\$118,123
Erosion Control (EC)	\$52,346
Landscaping Allowance	\$134,247
Traffic Signal	\$167,000
Retaining Walls	\$120,320
On-Site Embankment/Excavation	\$160,736
Street Improvements (Local Residential)	\$170,839
Street Improvements (Private Drive)	\$11,231
Street Signs and Markings	\$18,650
Storm Improvements (On-Site)	\$139,970
Storm Improvements (Off-Site)	\$23,386
Storm Improvements (Water Quality & Detention)	\$149,043
Sanitary Improvements	\$97,265
Waterline Improvements	\$150,205
Franchise Utilities	\$182,100
Development Review	\$34,746
Building Structural Permits	\$76,818
Building -- Trades	\$27,600
SDC Parks and Recreation	\$319,242
SDC Sanitary Sewer	\$70,196
SDC Transportation	\$49,290
SDC Surface Water	\$3,674
SDC Water	\$192,832
DEQ Permit	\$15,350
Erosion Control Fee	\$1,500
Water Meter Fee	\$18,492
Architectural Plan Review	\$170,000
Final Development Plan	\$5,000
Final Plat Review and Recording	\$20,500
Civil Engineering	\$173,500
Security (Site-Fencing)	\$4,350
Temporary Facilities	\$3,600
Insurance and Legal Service Fees	\$95,815
Project Contingency (10%)	\$297,796
TOTAL SITE DEVELOPMENT COSTS:	\$3,275,762

Habitat's Lake Oswego Project

In 2021, Habitat for Humanity signed a contract to purchase a 1.92-acre property from a supporter of affordable housing in Lake Oswego. The discounted land is located at Boones Ferry Road and Upper Drive and has been approved for 23 homes. This project is perfectly suited for long-term ownership—close to great schools, transportation, shopping and services, and high-opportunity employment centers. Now we're looking for funding from local governments to help Habitat leverage our investment to develop the infrastructure for the new neighborhood.

Project Details

- **Land:** 1.92 acres for 23 permanently affordable homes
- **Need:** Infrastructure installation
- **Project Budget:** \$3.2 Million
- **Request:** We're asking the City of Lake Oswego and Clackamas County to each approve a one-time allocation of \$800,000 to match Habitat's \$1.6M investment for this community's infrastructure
- **Timeline:** January 1st 2022 through December 31st 2022

Serving the Community

- 23 permanently affordable homes, preserving affordability for future buyers
- Homeownership for 100+ Lake Oswego residents, over 50 children
- An affordable mortgage payment that brings immediate financial relief, with long-term ability to save for retirement, education, and healthcare
- Habitat homebuyers are diverse: over 80% are People of Color, 40% are single mothers, and nearly a third have a disability

Impact of this Investment: this funding would enable Habitat to develop this property quicker and with greater efficiency, transforming the lives of 23 local families as they become first-time homebuyers and permanent residents of Lake Oswego's economy and community. This would improve the financial outcome of families while also demonstrating the powerful impact that local government can have on our region's housing crisis.

HABITAT FOR HUMANITY PORTLAND/METRO EAST
Subrecipient Grant Agreement – 24-022 - *ARPA Affordable Housing*
Page **23** of **23**

Exhibit J: County Declaration of Restrictive Covenants

After Recording Return to:
Clackamas County – County Administration
2051 Kaen Road
Oregon City, OR 97045

SPACE ABOVE FOR RECORDER’S USE

CLACKAMAS COUNTY

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (this “**Declaration**”) is made and entered into by and between Habitat for Humanity Portland/Metro East, an Oregon nonprofit public benefit corporation (“**Declarant**”) and Clackamas County, a political subdivision of the State of Oregon (“**County**”). County and Declarant may be referred to herein jointly as the “**Parties**” or individually as a “**Party**”. This Declaration is effective upon execution by both Parties (the “**Effective Date**”)

RECITALS

- A. The American Rescue Plan Act of 2021 (“**ARPA**”) provides State and Local Fiscal Recovery Funds to address the public health and economic impacts of the COVID-19 pandemic.
- B. County has identified a critical need for affordable housing to support low- and moderate-income residents affected by the economic downturn caused by the pandemic.
- C. County aims to utilize ARPA funds to support affordable housing initiatives that will increase the availability of affordable units, stabilize housing for vulnerable populations, and promote long-term economic recovery.
- D. Declarant was selected to receive a grant to implement the affordable housing project in accordance with the goals of ARPA and the specific needs identified within the community.
- E. County’s ARPA funds will be used to cover approximately one quarter of the total cost for pre-construction infrastructure installations for the West Lake Grove townhomes that are in development on a 1.92-acre property located at 16858 Boones Ferry Road in Lake Oswego, on the intersection of Boone’s Ferry Road and Upper Drive, and more particularly described in Exhibit A, attached hereto (the “**Property**”).
- F. The Property has been approved for 23 townhomes, and infrastructure installation includes water, sewer, utilities, and street-lighting installments; permitting fees; and transportation upgrades in the area including traffic lights, signs, stormwater, retaining walls, and road upgrades (the “**Project**”).
- G. The goal of the Project is to offer long-term affordability for a minimum of 99 years through a shared equity or land trust model. This is structured with Proud Ground through a program service MOU. Through this collaboration, the fee interest in the Property will be held by Declarant for the 99-year period, in a community land trust model to ensure long-term affordability beyond the 50-year requirement. The homes will be sold at a below-

market, affordable base price. Buyers will agree to a shared equity formula, which allows families to build some wealth while preserving each home’s affordability for future buyers, which is documented in a Short Form Land Lease (each a “**Homeowner Lease**”) with each home buyer incorporating the terms and conditions set forth in the Master Form Land Lease Creating Affordable Housing Covenants recorded in the Records of Clackamas County as Document No. 2023-009912.

- H. Townhomes on the Property, once constructed, will be sold to households making no more than 80% of area medium income (“AMI”), as determined by the U.S. Department of Housing and Urban Development (“HUD”).
- I. Declarant will use provided funds to pay for roads, curbs, sidewalks, foundations, dry utilities and other site development costs that are needed before the construction of the buildings begin, and to address County’s concerns with negative economic impacts deriving from the COVID-19 pandemic and its after-effects.
- J. County is willing to issue a subrecipient grant agreement (the “**Agreement**”) conditioned upon Borrower’s compliance with the terms and conditions of the Agreement and the issuance of this Declaration.
- K. Under the Agreement, Declarant was granted up to **EIGHT HUNDRED THOUSAND DOLLARS AND No CENTS (\$800,000)** to pay for pre-construction infrastructure costs including roads, curbs, sidewalks, foundations, dry utilities and other site development costs that are needed before the construction of the buildings begin, and to address County’s concerns with negative economic impacts deriving from the COVID-19 pandemic and its after-effects.
- L. The Parties desire that this Declaration be recorded in the relevant records of Clackamas County at Declarant’s cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring, and operation of the Project.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, including the terms, conditions, covenants, warranties, and undertakings set forth herein, the Parties agree as follows:

1. INCORPORATION.

The foregoing recitals and exhibit(s) to this Declaration are incorporated into this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the incorporated items do not modify the express provisions of this Declaration.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant represents, warrants and covenants that:

2.1. Organization and Authority.

(a) Declarant is an Oregon nonprofit public benefit corporation validly created and existing under the laws of the State of Oregon.

(b) Declarant has all necessary right, power and authority under its organizational documents to (a) execute, deliver and record this Declaration, and (b) incur and perform its obligations under this Declaration.

2.2. Use of Agreement Funds. Declarant has used or will use the Agreement funds only for the Project costs as provided for in this Declaration and the Agreement.

2.3. Full Disclosure. Declarant has disclosed in writing to County all facts that may materially adversely affect the Project, or the ability of Declarant to perform all obligations required by this Declaration. Declarant has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Agreement, the Project and this Declaration. The information contained in this Declaration is true and accurate in all respects.

2.4. Pending Litigation. Declarant has disclosed in writing to County all proceedings, environmental or otherwise, pending (or to the knowledge of Declarant, threatened) against or affecting Declarant, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.5. No Defaults.

(a) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Declaration.

(b) Declarant has not violated and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.6. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Declaration will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Declarant is a party or by which the Project or any of Declarant's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, charter, ordinances or other Oregon law pursuant to which Declarant was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Declarant, the Project or Declarant's properties or operations.

2.7. Governmental Consent. Declarant has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the

making and performance of its obligations under this Declaration and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located.

2.8. Responsibility. Declarant assumes full responsibility for timely and appropriate completion of the Project, for ownership of the Project, for its operation in accordance with this Declaration and the Agreement and acknowledges that County has no direct or contractual responsibility for the Project, for ownership of the Project, or for its operation.

3. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant also represents, warrants, and covenants that:

3.1. Fair Housing and Other Civil Rights Compliance. Declarant shall comply with all applicable state and federal nondiscrimination laws, including but not limited to the Fair Housing Act and the Americans with Disabilities Act;

3.2. Use Restrictions and Duration.

(a) Use Restrictions. Upon completion of the Project and for the duration of the Use Restriction Period (as hereinafter defined), Declarant shall continuously operate the Project to sell all homes to households making no more than 80% AMI (“Qualified Homeowner” or “Qualified Household”), as determined by HUD. County acknowledges that certain transfers of homes to the heirs or designees of a homeowner upon their death (transfers to the deceased homeowner’s spouse or domestic partner, child or children, or members of the homeowner’s household who have resided continuously in the home for at least the year immediately prior to homeowner’s death), will not be subject to the 80% AMI restriction although the Use Restriction will continue to run with the land pursuant to Section 5.2 below.

(b) Use Restriction Period. For a period commencing with the first sale of a home in the Project and for fifty (50) more years from December 31st of the year that the Project is completed (the “Use Restriction Period”), Declarant is required to provide and comply with the requirements of the Use Restrictions.

(c) Lease Payment Restrictions. Throughout the Affordability Period, Declarant shall restrict the payments that a Qualified Homeowner is obligated to pay under the Homeowner Lease to ensure that the payment, when combined with any mortgage payment owed by such Qualified Homeowner for the home, does not exceed what is considered affordable, as determined by HUD on an annual basis, to a household with an income of 80% of the AMI as calculated by HUD on an annual basis.

3.3. Habitability; Other Compliance. Throughout the Use Restriction Period, Declarant will manage the Project in a safe and sanitary condition that is satisfactory to County and in accordance with applicable zoning, code and habitability requirements.

3.4. Financial Records. Declarant shall keep accurate books and records regarding use of the Agreement funds and maintain them according to generally accepted accounting principles applicable to Declarant in effect at the time.

3.5. Inspections; Information. Declarant shall permit County and any party designated by County: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Declarant's records regarding receipts, disbursements, contracts, investments and any other related matters. The County's rights to enter private homes owned by eligible buyers will be derivative of Declarant's rights for entry and inspection under the Homeowner Lease between each such buyer for their home and subject to notice and reasonableness requirements in the Homeowner Leases for home entries.

3.6. Reports.

(a) Declarant shall prepare and electronically submit written quarterly reports to the County in the period before the initial sales to eligible buyers of all of the homes in the Project ("**Quarterly Reporting Period**") that satisfy the reporting requirements under the Agreement and the continued use of the Project for the agreed purpose as defined in this Declaration. After the Quarterly Reporting Periods, such written reports will be due annually, on January 31 of each calendar year of the term of the Use Restriction Period, through December 31, 2031 (one year after the Treasury Department's audit period).

(b) Reporting under this Declaration are subject otherwise to the terms of the Agreement.

(c) Declarant shall supply any other reports and information related to the Project as County may reasonably require.

3.7. Records Maintenance. Declarant shall retain and keep accessible all books, documents, papers, and records that are directly related to this Declaration, the Project, or the Agreement throughout the Use Restriction Period and for a minimum of six (6) years, or such longer period thereafter, as may be required by County.

3.8. Corrective Action. As a consequence of its monitoring, review of quarterly reports or otherwise, County may identify deficiencies in Declarant's compliance with this Declaration. County may require action by Declarant (satisfactory to County) to correct such deficiencies. Declarant must correct such deficiencies within thirty (30) days of notice by County of such deficiencies unless earlier correction is required by County to address material health or safety needs of Project users. The reasonableness of such corrective actions is subject to County in its sole discretion. Nothing herein is intended or may be construed to impose any duty on County to identify deficiencies in Declarant's compliance with this Declaration or to require any action by Declarant to correct such deficiencies, and Declarant remains solely responsible for compliance with this Declaration.

3.9. Insurance, Damage. Declarant shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or

destruction of the Project, at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar properties/facilities. Following the initial sale of a home in the Project and formation of a homeowner's association for the Project, policies held by the association that fulfill the requirements herein will be deemed satisfaction of Declarant's insurance requirements to cover the risk of direct physical loss, damage or destruction of the Project and for liability arising from the Property that names Declarant as an additional insured.

4. FURTHER ASSURANCES.

4.1. Further Acts. Declarant, at any time upon request of County, will do, make, execute and deliver all such additional and further acts, instruments or papers as County may require in its sole discretion to protect County's rights under this Declaration.

4.2. Reliance. County may rely upon statements, certificates, and other records of Declarant and its agents and assigns, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

5. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.

5.1. Inducement. Declarant represents, covenants and warrants that the issuance to it of the Agreement described herein by County is an inducement to Declarant to complete the Project and to operate the Project in accordance with the Agreement and this Declaration. In consideration of the issuance of the Agreement, Declarant has entered into this Declaration and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, Declarant covenants, agrees and acknowledges that County has relied on this Declaration in determining to issue the Agreement.

5.2. Covenants; Equitable Servitudes.

(a) County and Declarant hereby declare their express intent that throughout the Use Restriction Period the covenants, restrictions, charges and easements set forth herein, including the Use Restrictions, will be deemed covenants running with the Property and will create equitable servitudes running with the Property, and will pass to and be binding upon County's and Declarant's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

(b) Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (other than the Homeowner Leases) will contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered

and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

(c) Any and all legal requirements for the provisions of this Declaration to constitute restrictive covenants running with the Property and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of County, are deemed satisfied in full.

(d) The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Declaration, or if required, such consent has been or will be obtained by Declarant.

5.3. Burden and Benefit.

(a) Declarant hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes, including the Use Restrictions, set forth herein touch and concern the Property, and the Project as a whole, in that Declarant's legal interest in the Project is rendered less valuable thereby.

(b) Declarant hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by intended beneficiaries (in addition to County) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Agreement was issued.

5.4. Right of Modification. County may compromise, waive, amend or modify the terms of this Declaration including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Declarant or subsequent Project owners, as it so determines in County's sole discretion to be to the benefit of County, the Project, or County efforts to provide or maintain safe and sanitary conditions of the Project. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized County representative.

6. GENERAL PROVISIONS.

6.1. Compliance with Applicable Laws and Requirements.

(a) **Compliance.** Declarant shall comply with and shall ensure that the Project complies with all federal, state and local laws, rules regulations, codes, ordinances, and orders applicable to the Project.

(b) **Contracts; Subcontracts.** Declarant shall ensure that all contracts and subcontracts related to the Project or this Declaration to which Declarant is a party comply with the terms and conditions hereof, including containing a provision to that effect therein.

(c) **Endurance of Obligations.** Declarant will remain fully obligated under the provisions of this Declaration notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Project with respect to which Agreement funding is being provided.

6.2. Indemnity. Declarant assumes sole liability for breach of the conditions of this Declaration by Declarant or any of its officers, agents, employees, and assigns. Declarant will save, hold harmless, indemnify, and defend the County and its officers, agents, employees, members, and assigns, from all suits, actions, claims, losses or damages, liabilities, costs and expenses of whatsoever nature, kind or description, including attorney fees (collectively, “**Claims**”) related to the Agreement, the Project, this Declaration or resulting from or arising out of the acts, omissions, neglect or misconduct of Declarant or its subcontractors, agents, or employees under this Declaration or related to the Agreement or the Project, to the extent permitted by law. Neither Declarant nor any attorney engaged by Declarant may defend any Claim in the name of the County (including any agency of the County), nor purport to act as legal representative for the County, without first receiving from the County, in a form and manner determined appropriate by the County, authority to act as legal counsel for the County, nor may Declarant settle any Claim on behalf of the County without the approval of the County. This Section shall survive expiration or termination of this Declaration.

6.3. Indemnification by Subcontractors.

In respect of its development and construction of the Project, Declarant shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the County and its officers, employees and agents (“**Indemnitee**”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Declarant’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“**Claims**”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims. This Section shall survive expiration or termination of this Declaration.

6.4. Time of the Essence. Time is of the essence in the performance by Declarant of the terms of this Declaration.

6.5. No Discrimination; Marketing. Except as permitted by law, Declarant will not inappropriately discriminate in the provision of housing or services on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance.

6.6. Notice. Except as otherwise expressly provided in this Declaration, any notices required or permitted to be given under this Declaration will be given in writing, by personal delivery, or mailing the same, postage prepaid, to County or Declarant at the following addresses:

If to County: Clackamas County Administrator
2051 Kaen Road,
Oregon City, OR 97045

If to Declarant: Attn: Habitat for Humanity Portland/Metro East
1478 NE Killingsworth St.
Portland, OR 97211 (P. O. Box #11527, Portland, OR 97211)

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

6.7. No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Declaration, County and Declarant are the only Parties to this Declaration and are the only Parties entitled to rely on and enforce the terms of this Declaration. Nothing in this Declaration gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Declaration and only to the degree they are expressly described as intended beneficiaries of particular terms of this Declaration and only with such remedies as expressly given herein with respect to such interests.

6.8. Declarant Status.

(a) Independent Contractor. Declarant shall perform all obligations under this Declaration and will timely satisfy its obligations hereunder as an independent contractor. Declarant is independent of County and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. Declarant is not an agent of County and undertakes this work under this Declaration independent from the control and direction of County. Declarant shall not seek or have the power to bind County in any transaction or activity.

(b) Declarant Responsible for Insurance Coverage. Declarant agrees that insurance coverage, whether purchased or by self-insurance, for Declarant's agents, employees, officers and/or subcontractors is the sole responsibility of Declarant.

(c) Non-Federal Employment Certification. Declarant certifies that it is not employed by or contracting with the Federal Government for performance covered by this Declaration.

(d) Good Standing Certification. Declarant certifies to the best of its knowledge and belief that neither Declarant nor any of its principals, officers, directors or employees providing services under this Declaration:

(i) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

(ii) Has within a three (3) year period preceding this Declaration been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract related to a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(iii) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subsection (d)(ii) of this Section;

(iv) Has within a three (3) year period preceding this Declaration had one or more public transactions (federal, state or local) terminated for cause or default; and

(v) Is included on the list titled “**Specially Designated Nationals and Blocked Persons**” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:

<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

6.9. Termination. County may terminate this Declaration in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Declarant, under any of the following conditions:

(a) If funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full Agreement funding; or

(b) If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of Agreement funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the Agreement funding identified in this Declaration from the planned funding source(s); or

(c) If any authority required by law or regulation to be held by Declarant to complete the Project ends for any reason; or

(d) If Declarant is unable or fails to commence the Project within six (6) months from the date of this Declaration; or

(e) If Declarant breaches or fails to timely perform any of its obligations under this Declaration, and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or

(f) If County determines that any representation, warranty or covenant of Declarant, whether in whole or in part, is materially false, invalid, or in default; or

(g) If Declarant (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

(h) Termination of this Declaration does not terminate or otherwise impair or invalidate any remedy available to County or to Declarant hereunder, at law, or otherwise.

6.10. Declarant Default. Any of the following constitutes an “**Event of Default**” of Declarant:

(a) Any default under the terms and conditions of the Agreement beyond notice and any cure period.

(b) Any false or misleading representation is made by or on behalf of Declarant, in this Declaration or in any document provided by Declarant to County related to the Agreement or the Project.

(c) Declarant fails to perform any obligation required under this Declaration and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Declarant by County, or such longer period as County may agree to in writing, if County determines in its sole discretion that Declarant has instituted and is diligently pursuing corrective action.

(d) Declarant: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an

involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing.

(e) A proceeding or case is commenced, without the application or consent of Declarant, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Declarant, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Declarant or of all or any substantial part of its assets, or (iii) similar relief in respect to Declarant under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Declarant is entered in an involuntary case under the Federal Bankruptcy Code.

(f) Declarant sells or transfers (or attempts to sell or transfer) all or any part of, or any interest in, the Property or the Project, or any beneficial interest in Declarant, without the prior written consent of the County (which the County may grant, condition, or withhold in its sole and absolute discretion), other than conveyances to qualified households under Section 3.2 of this Declaration. As used herein, and except as identified below, the term “sale or transfer” is used in its broadest sense, and includes, with respect to the Property or Project, a ground lease, master lease or other lease not in the ordinary course of business, land sale contract, foreclosure, deed in lieu of foreclosure, or transfer (by operation of law or otherwise) pursuant to any dissolution, liquidation, merger, reorganization or consolidation, and with respect to a beneficial interest in Declarant, a sale, gift or other transfer of any partnership, stock, membership or other ownership interest in Declarant.

6.11. County Default. County will be in default under this Declaration if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Declaration.

6.12. Remedies.

(a) **Repayment.** If this Declaration or any part hereof, terminates prior to the term of the Use Restriction Period, Declarant will, within thirty (30) days of written demand for repayment by County, repay to the County the sum of \$800,000 granted under the Agreement. If this Declaration, or any part hereof, terminates prior to the term of the Use Restriction Period, Declarant will, within thirty (30) days of written demand for repayment by County, repay the \$800,000 to County multiplied by a fraction, the numerator of which is 50 minus the number of full years that have transpired between the year the Project is completed and the year of County’s demand and the denominator of which is 50. **In no event will any Qualified Homeowner be subject to any obligation of repayment under this Declaration.**

(b) **Deficiencies.** County may, from time to time, identify and direct Declarant to correct deficiencies (including deficiencies by the Owner) in its compliance with this Declaration, which it shall correct as so directed.

(c) Extension of Use Restriction Period. County may by written notice extend the Use Restriction Period described in this Declaration for periods of time matching corresponding periods of time during which County determines Declarant to be in material noncompliance with any of the terms of this Declaration. Such extensions may be recorded in the County's property records.

(d) Additional Remedies. If Declarant defaults in the performance or observance of any covenant, agreement or obligation set forth in this Declaration (including correction of deficiencies), and if such default remains uncured by Declarant for a period of thirty (30) days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that County determines in its sole discretion relate to material health or safety needs of Project occupants) after notice thereof shall have been given by County, or if such default runs for a period of thirty (30) days from the date Declarant should, with due diligence, have discovered such default, then County may declare an Event of Default to have occurred hereunder provided, however, if a default is not reasonably capable of being cured within thirty (30) days or any lesser notice period provided by County, County may, in its sole discretion, extend the correction period for up to six (6) months, but only if County determines in its sole discretion there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing Event of Default will be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by County, an Event of Default will be deemed to occur, and County may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder County may, at its option, take any one or more of the following steps in addition to all other remedies provided in this Declaration, by law, or in equity:

i. By suit for specific performance or other action or proceeding at law or in equity, require Declarant specifically to perform its obligations under this Declaration or enjoin any acts or things that may be unlawful or in violation of the rights of County under this Declaration;

ii. Obtain the appointment of a receiver to operate the Project in compliance with this Declaration;

iii. Withhold from Declarant, suspend or terminate, or (upon thirty (30)-days' written demand) require the repayment of all or part of any disbursed Agreement funds or other funding assistance provided by County to Declarant with respect to the Project;

iv. Declare Declarant, its owners, principals, employees, and agents ineligible to receive further County funds or other County financial assistance, including with respect to other projects or requests for same, for such period as County determines in its sole discretion;

v. Offset amounts due from repayment of the Agreement against other funding awarded or to be awarded to Declarant;

vi. Have access to, and inspect, examine and make copies of, all of the books and records of Declarant pertaining to the Project and to inspect the Project itself;

vii. Enter onto the Property and correct Events of Default with respect to the Project at Declarant's expense, which expense Declarant will repay to County within ten (10) days of any presentation of charges for same; and

viii. Take such other action under this Declaration, at law, in equity, or otherwise as may be available to County.

(e) **Survival of Remedies; Remedies Not Exclusive; Non-Waiver.** The rights and remedies of County provided for in this Declaration, which by their nature are intended to survive termination of this Declaration, will survive the termination of the Use Restriction Period and of this Declaration. Furthermore, such remedies will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by County to enforce any provision of this Declaration will constitute a waiver by County of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

6.13. Severability. If any term or provision of this Declaration is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Declaration did not contain the particular term or provisions held to be invalid.

6.14. Survival of Obligations. The obligations of Declarant as set forth in this Declaration will survive the expiration or termination of the Agreement.

6.15. Construction. The Parties to this Declaration acknowledge that each party and its counsel have participated in the drafting and revision of this Declaration (or knowingly and voluntarily waived the party's right to do so). Accordingly, the Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Declaration or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Declaration.

6.16. Captions. The captions or headings in this Declaration are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Declaration.

6.17. Execution and Counterparts. This Declaration may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

6.18. Governing Law; Venue: Consent to Jurisdiction. This Declaration will be governed by

the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “**Claim**”) related to this Declaration will be conducted exclusively within the Circuit Court of Clackamas County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by County of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. County expressly reserves all sovereignty rights. **DECLARANT, BY EXECUTION OF THIS DECLARATION, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

6.19. Merger Clause. This Declaration constitutes the entire agreement between the Parties on the subject matter hereof. No modification or amendment of this Declaration will bind either Party unless in writing and signed by the Parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Declaration.

6.20. No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Declaration, each Party shall be responsible for its own attorneys' fees and expenses.

6.21. No Limitations on Actions of County in Exercise of Its Governmental Powers. Nothing in this Declaration is intended, nor will it be construed, to in any way limit the actions of County in the exercise of its governmental powers. It is the express intention of the Parties hereto that County will retain the full right and ability to exercise its governmental powers with respect to Declarant, the Project, this Declaration, and the transactions contemplated by this Declaration to the same extent as if it were not a party to this Declaration or the transactions contemplated hereby, and in no event will County have any liability in contract arising under this Declaration, or otherwise by virtue of any exercise of its governmental powers.

(Signature Pages Follow)

IN WITNESS WHEREOF, County and Declarant have caused this Declaration to be signed by their duly authorized officers on the Effective Date.

Clackamas County

By: _____
Tootie Smith
Chair

STATE OF OREGON)
 : ss
County of Clackamas)

This instrument was acknowledged before me this ____ day of _____ 2024, by Tootie Smith, for and on behalf of the County.

NOTARY PUBLIC FOR OREGON
My Commission Expires: January 5, 2027

IN WITNESS WHEREOF, County and Declarant have caused this Declaration to be signed by their duly authorized officers on the Effective Date.

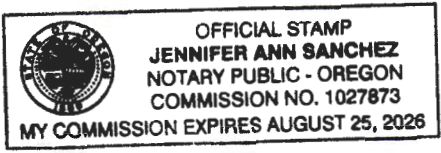
DECLARANT:

**HABITAT FOR HUMANITY
PORTLAND/METRO EAST**

By: 
Steve Messinetti, Chief Executive Officer

STATE OF OREGON)
County of Multnomah : ss
~~Clackamas~~
gms 10/1/24

This instrument was acknowledged before me this 1st day of October 2024,
by Steve messinetti, Chief Executive Officer for Habitat for Humanity
Portland/Metro East, an Oregon nonprofit corporation, on its behalf.



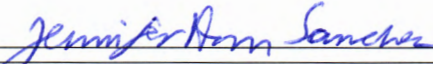

NOTARY PUBLIC FOR OREGON
My Commission Expires: August 25, 2026

EXHIBIT A
Legal Description

Lots 1 through 23, WEST LAKE GROVE TOWNHOMES, in the City of Lake Oswego, County of Clackamas and State of Oregon.