

INTERGOVERNMENTAL AGREEMENT

Contract No. _____

Natural Areas Bond Measure Capital Grants Component

This Intergovernmental Agreement (this “Agreement”), entered into under the provisions of ORS chapter 190 and effective on the date the Agreement is fully executed (the “Effective Date”), is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and the _____, located at _____ (the “Government Sponsor”).

RECITALS

WHEREAS, the electors of Metro approved Ballot Measure 26-80 on November 7, 2006, authorizing Metro to issue \$227.4 million in bonds to preserve natural areas, clean water, and protect fish and wildlife (the “Measure”);

WHEREAS, the Measure allocated \$15 million from bond proceeds to the Nature in Neighborhoods Capital Grants Program to complement the regional and local share portions of the Measure by providing opportunities for the community to actively protect fish and wildlife habitat and water quality in areas where people live and work;

WHEREAS, Metro has determined to make a grant award to **[SPECIFY GRANT APPLICANT]** (the “Grant Recipient”) to fund a **[SPECIFY PROJECT]** (the “Project”) in accordance with a grant agreement between Metro and the Grant Recipient, the form of which agreement is attached hereto as Exhibit A (the “Grant Agreement”);

WHEREAS, the Government Sponsor, a local government jurisdiction, is the owner of certain property where the Project is to occur and be located, which property is more specifically identified in the Grant Agreement (the “Property”); and

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WHEREAS, the Government Sponsor has approved of the Project and an agreement between Metro and the Government Sponsor is now needed to satisfy the terms and conditions of the Nature in Neighborhoods Capital Grants Program as provided for in the Measure.

NOW THEREFORE, the parties agree as follows:

1. Government Sponsor's Consent and Agreement

The Government Sponsor hereby approves the Project described in the Grant Agreement and authorizes such project to take place on the Property. As a condition precedent to Metro's agreement to fund the Project, the Government Sponsor hereby agrees to comply with the terms and conditions of this Agreement, the applicable provisions of the Measure, and the attached Grant Agreement.

2. Declaration of Capital Project

In accordance with the Measure, Metro may only provide funds to the Grant Recipient for the Project so long as such funds are exclusively used for capital expenses. The Government Sponsor hereby confirms that the Project will result in the creation of a capital asset as specifically described in the Grant Agreement to be owned by the Government Sponsor. The monetary value of the Project that is recorded as a capital asset shall be no less than the amount of the grant award that is provided to Grant Recipient. The Government Sponsor covenants that it will (a) own and hold all such capital improvements and real property interests acquired pursuant to this Agreement, and (b) record the asset created by the Project as a fixed, capital asset in the Government Sponsor's audited financial statement, consistent with Generally Accepted Accounting Principles ("GAAP") and with the Government Sponsor's financial bookkeeping of other similar assets.

3. Funding

Metro has no financial obligation to the Government Sponsor under this Agreement. Metro's funding is being provided to the Grant Recipient pursuant to the Grant Agreement between Metro and the Grant Recipient.

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4. Purpose; Limitations

A. The purpose of this Agreement is to implement the Measure and facilitate the funding of a Nature in Neighborhoods Capital Grants Program project on the Property.

B. At no time will Metro have any supervisory responsibility regarding any aspect of the Project or the Property. Any indirect or direct involvement by Metro in the Project shall not be construed or interpreted by the Government Sponsor as Metro's assumption of a supervisory role.

5. Term

It is the intent of the parties for the Project to have been completed, and for all Metro funding to have been provided to Grant Recipient prior to **[INSERT PROJECT DEADLINE]**. Notwithstanding the forgoing, all provisions set forth in this Agreement, and the obligations of the Government Sponsor hereunder, shall continue in effect after the completion of the Project until June 30, 2027.

6. Limitations on Use of Property

A. Real Property and Associated Buildings and Improvements

Throughout the term of this Agreement, the portion of the Property upon which the Project will be located (the "Project Area") shall be maintained and operated in a manner consistent with one or more of the following intended and stated purposes of the Measure (the "Nature in Neighborhood Approved Purposes"):

- To safeguard water quality in local rivers and streams;
- To protect and enhance fish and wildlife habitats;
- To promote partnerships that protect and enhance nature in neighborhoods; and
- To increase the presence of ecological systems and plant and animal communities in nature deficient and other disadvantaged neighborhoods;

Notwithstanding the forgoing, secondary uses that arise as a result of the Project Area being used primarily in accordance with the Nature in Neighborhood Approved Purposes will be permitted, but only to the extent such secondary uses affect a *de minimis* portion of the

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Project Area or are necessary in order to facilitate the primary Nature in Neighborhood Approved Purposes. For example, if, as part of a land use review proceeding initiated to obtain the necessary approvals to operate the Project Area consistent with the Nature in Neighborhood Approved Purposes, a portion of the Project Area was required to be dedicated as a road, such road dedication would be a permitted secondary use of the Project Area.

B. Construction of Buildings or Other Capital Improvements

All buildings and other capital improvements constructed on the Property using funds provided by Metro pursuant to the Grant Agreement shall be maintained in accordance with the Nature in Neighborhood Approved Purposes. The Government Sponsor may not sell, use, or authorize others to use such buildings or improvements in a manner inconsistent with the intended and stated purposes of the Measure.

7. Oregon Constitution and Tax Exempt Bond Covenants

The Government Sponsor acknowledges that Metro's source of funds for the Nature in Neighborhoods Capital Grants Program is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11, 11b, 11c, 11d, and 11e of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The Government Sponsor covenants that it will take no actions that would cause Metro not to be able to maintain the current status of the real property taxes imposed to repay these bonds as exempt from Oregon's constitutional property tax limitations or the income tax exempt status of the bond interest under IRS rules. In the event the Government Sponsor breaches this covenant, the Government Sponsor shall undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, reimbursing Metro for any Projects funded under this Agreement that resulted in the Government Sponsor's breach of its covenant described in this Section.

8. Funding Recognition

The Government Sponsor shall recognize in any publications, media presentations, or other presentations referencing the Project produced by or at the direction of the Government

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Sponsor, including, without limitation, any on-site signage, that funding for the Project came from the Metro Natural Areas Bond Measure's Nature in Neighborhoods Capital Grants Program. Such recognition shall comply with the recognition guidelines detailed in the Measure. The Government Sponsor shall also permit the Grant Recipient to place at or near the Project's location signage that communicates that funding for the Project came from the Metro Natural Areas Bond Measure's Nature in Neighborhoods Capital Grants Program.

9. Termination for Cause

A. Subject to the notice provisions set forth in Section 9B below, Metro may terminate this Agreement, in full or in part, at any time during the term of the Agreement if Metro reasonably determines that the Government Sponsor has failed to comply with any provision of this Agreement and is therefore in default.

B. Prior to terminating this Agreement in accordance with Section 9A above, Metro shall provide the Government Sponsor with written notice that describes the reason(s) that Metro has concluded that the Government Sponsor is in default and includes a description of the steps that the Government Sponsor shall take to cure the default. The Government Sponsor shall have 30 days from the date such notice is received of default to cure the default. In the event the Government Sponsor does not cure the default within the 30-day period, Metro may terminate all or any part of this Agreement. Following such termination, Metro shall notify the Government Sponsor in writing of effective date of the termination.

C. The Government Sponsor shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default. Following such termination, should Metro later determine or a court find that the Government Sponsor was not in default or that the default was excusable (e.g. due to a labor strike, fire, flood, or other event that was not the fault of, or was beyond the control of the Government Sponsor) this Agreement shall be reinstated or the parties may agree to treat the termination as a joint termination for convenience whereby the rights of the Government Sponsor shall be as set forth below in Section 10.

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10. Joint Termination for Convenience

Metro and the Government Sponsor may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective only upon the mutual, written, signed agreement of both Metro and the Government Sponsor.

11. Mutual Indemnification

The Government Sponsor shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by the Government Sponsor or the Government Sponsor's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30. Metro shall indemnify, defend, and hold the Government Sponsor and the Government Sponsor's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by Metro or Metro's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

12. Project Records, Audits, and Inspections

A. For the term of this Agreement, the Government Sponsor shall maintain comprehensive records and documentation relating to the Project and the Government Sponsor's performance of this Agreement (hereinafter "Project Records"). Project Records shall include all records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with any Project.

B. In accordance with Section 2 above, the Government Sponsor shall maintain all fiscal Project Records in accordance with GAAP. In addition, the Government Sponsor shall maintain any other records necessary to clearly document:

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(i) The Government Sponsor's performance of its obligations under this Agreement, its compliance with fair contracting and employment programs, and its compliance with Oregon law on the payment of wages and accelerated payment provisions;

(ii) Any claims arising from or relating to (a) the performance of the Government Sponsor under this Agreement, (b) Government Sponsor's relationship with the Grant Recipient, or (c) any other contract entered into by the Government Sponsor that relates to this Agreement or the Project;

(iii) Any cost and pricing data relating to this Agreement; and

(iv) Payments made to all suppliers and subcontractors engaged in any work for the Government Sponsor related to this Agreement or the Project.

C. The Government Sponsor shall maintain Project Records for the longer period of either (a) six years from the date the Project is completed, or (b) until the conclusion of any audit, controversy, or litigation that arises out of or is related to this Agreement or the Project and that commences within six years from the date the Project is completed.

D. The Government Sponsor shall make Project Records available to Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places, regardless of whether litigation has been filed on any claims. If the Project Records are not made available within the boundaries of Metro, the Government Sponsor agrees to bear all of the costs incurred by Metro to send its employees, agents, or consultants outside the region to examine, audit, inspect, or copy such records, including, without limitation, the expense of travel, per diem sums, and salary. Such costs paid by the Government Sponsor to Metro pursuant to this Section shall not be recoverable costs in any legal proceeding.

E. The Government Sponsor authorizes and permits Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, to inspect, examine, copy, and audit the books and Project Records of the Government Sponsor, including tax returns, financial statements, other financial documents relating to this

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Agreement or the Project. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provision of Section 12(F) below.

F. The Government Sponsor agrees to disclose Project Records requested by Metro and agrees to the admission of such records as evidence in any proceeding between Metro and the Government Sponsor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

G. In the event the Project Records establish that the Government Sponsor owes Metro any sum of money or that any portion of any claim made by the Government Sponsor against Metro is not warranted, the Government Sponsor shall pay all costs incurred by Metro in conducting the audit and inspection.

13. Public Records

All Project Records shall be public records subject to the Oregon Public Records Law, ORS 192.410 to 192.505. Nothing in this Section shall be construed as limiting the Government Sponsor's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).

14. Law of Oregon; Public Contracting Provisions

The laws of the state of Oregon shall govern this Agreement and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187, 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. Specifically, it is a condition of this Agreement that the Government Sponsor and all employers working under this Agreement are subject to and will comply with ORS 656.017 and that, for public works subject to ORS 279C.800 to 279C.870 pertaining to the payment of prevailing wages as regulated by the Oregon Bureau of Labor and Industries, the Government Sponsor and every contractor and subcontractor shall comply with all such provisions, including ORS 279C.836 by filing a public works bond with

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the Construction Contractors Board before starting work on the project, unless exempt under that statute.

15. Notices and Parties' Representatives

Any notices permitted or required by this Agreement shall be addressed to the other party's representative(s) as set forth below and shall be deemed received (a) on the date they are personally delivered, (b) on the date they are sent via facsimile, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing notice in compliance with this Section of this Agreement.

Government Sponsor's Designated Representatives:

Fax _____

Metro's Designated Representatives:

Natural Areas Bond Program Manager
Metro Regional Center
600 N.E. Grand Ave.
Portland, OR 97223
Fax (503)-797-1849

with copy to:

Metro Attorney
600 N.E. Grand Ave.
Portland, OR 97223
Fax (503) 797-1792

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16. Assignment

The Government Sponsor may not assign any of its responsibilities under this Agreement without prior written consent from Metro, which consent shall not be unreasonably withheld.

17. Severability

If any term or provision in this Agreement shall be adjudged invalid or unenforceable, such adjudication shall not affect the validity or enforceability of the remainder of the Agreement, which remaining terms and provisions shall be valid and be enforced to the fullest extent permitted by law.

18. Entire Agreement; Modifications

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall 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 Agreement. The Parties, by the signatures below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

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

[Name of City/County/District]

METRO

Signature

Martha Bennett

Metro Chief Operating Officer

Print Name: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM BY:

Signature

Hope Whitney

Senior Assistant Metro Attorney

Print Name: _____

Title: _____

Date: _____

Date: _____