

INTERLOCAL AGREEMENT

This Interlocal Agreement is entered into this ____ day of _____, 2023, between The Metropolitan Government of Nashville and Davidson County, a metropolitan government organized and existing under the laws and Constitution of the State of Tennessee (hereinafter called the "Metropolitan Government"), and The Health and Educational Facilities Board of The Metropolitan Government of Nashville and Davidson County, a Tennessee nonprofit public corporation (hereinafter called the "Board").

WITNESSETH:

WHEREAS, pursuant to Resolution Nos. R74-946 and R74-1081, as both were ratified by Resolution No. R77-414, the Metropolitan Council of The Metropolitan Government of Nashville and Davidson County (the "Council") authorized the creation of the Board and approved its certificate of incorporation; and,

WHEREAS, the Board is a nonprofit public corporation performing a public function pursuant to Tennessee Code Annotated Section 48-101-301, et seq. ("the Act"), and is a public instrumentality of the Metropolitan Government; and,

WHEREAS, the Metropolitan Government and the Board have a shared interest in achieving the legislative purposes of the Board, including the provisioning for additional safe and sanitary multifamily housing facilities to be used by persons of low and/or moderate incomes; and,

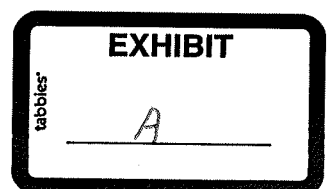
WHEREAS, on May 5, 2022, the Council adopted Ordinance No. BL2022-1170 (the "Ordinance") that established the Mixed-Income PILOT Program (the "Program"), which delegated to the Board the authority to negotiate and enter into payment-in-lieu-of-tax agreements with developers of qualifying multifamily housing properties who agree to provide a certain percentage of income-restricted housing units at affordable rates in accordance with the Program's requirements; and,

WHEREAS, the Ordinance required the housing division of the Metropolitan Planning Department to assist the Board with the administration, implementation, and oversight of the Program; and,

WHEREAS, in addition to the assistance provided by the housing division of the Metropolitan Planning Department, the Board also will need support for financial services and legal services to fully administer the Program; and,

WHEREAS, as enumerated in its certificate of incorporation and the Act, the Board has the power to employ and pay compensation to such employees and agents, including attorneys, as its board of directors shall deem necessary for the business of the Board; and,

WHEREAS, the Board has requested that in addition to the administrative assistance provided by the housing division of the Metropolitan Planning Department, the Metropolitan



Government also provide financial and legal services for the Board for the purposes of the Program; and,

WHEREAS, the Metropolitan Government has the resources to provide the additional financial and legal services for the Board through its Department of Finance and Department of Law; and,

WHEREAS, in order to enable the Board to fulfill its obligations for the Program pursuant to Ordinance, the Metropolitan Government has determined that it will benefit the public welfare to provide administrative, financial, and legal services to the Board for the Program; and,

WHEREAS, pursuant to Tennessee Code Annotated Section 12-9-101, et seq., public agencies in Tennessee have the authority to enter into interlocal agreements to achieve common objectives subject to the approval of their respective governing bodies by resolution or as otherwise provided for by law; and,

WHEREAS, the Metropolitan Government and the Board desire to enter into such an interlocal agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree as follows:

1. Recitals Incorporated by Reference. The foregoing recitals to this Interlocal Agreement (the "Agreement") are incorporated herein by reference and made a part hereof.

2. Term of Agreement. The term of this Agreement, and the duties and responsibilities of the parties hereunder, shall take effect upon approval by the Council and shall continue for so long as (i) the Program remains in effect or (ii) a qualifying property continues to receive a property tax abatement pursuant to the terms of the Program, whichever occurs last. Notwithstanding the foregoing, either party may terminate this Agreement at any time with adequate notice as provided for herein.

3. Services Provided. The Board hereby requests and the Metropolitan Government hereby agrees to provide administrative, financial and legal services to the Board for the Program as follows:

- a. The housing division of the Metropolitan Planning Department will provide all necessary administrative support related to the implementation and oversight of the Program in accordance with the provisions of the Ordinance; and,
- b. The Director of Finance or her designee will maintain accounts and funds on behalf of the Board for the purposes of the Program; and,
- c. The Director of Finance or her designee will allocate or transfer funds as appropriate, designate expenditures, and authorize payments, from the revenue maintained by the Metropolitan Government on the Board's behalf for the Program; and,

- d. The Director of Finance or her designee will handle all other financial matters as needed from time to time by the Board as are related to the Program; and,
- e. The Director of Law or his designee will provide legal counsel to the Board as is related to the Program.

For the avoidance of doubt, the support provided to the Board by the Metropolitan Government pursuant to this Agreement shall be solely for the purposes of the Program and any matters incidental thereto and shall not otherwise obligate the Metropolitan Government to provide additional aid or assistance to the Board for unrelated matters. Nothing herein shall be construed to limit or prohibit the Board from modifying or terminating this Agreement, in accordance with its terms, to elect to retain a third party rather than the Metropolitan Government to provide the financial and/or legal services that are to be provided pursuant to this Agreement.

4. Duties of the Board. The Board shall continue to conduct its business pursuant to Title 48, Chapter 101 of the Tennessee Code and its certificate of incorporation. For funds remitted to or on behalf of the Board for the Program, the Board shall maintain with the Metropolitan Government all cash on deposit for the duration of this Agreement and any extensions thereto. Upon the execution of any transaction related to the Program, the Board shall deposit or direct the deposit of all appropriately designated funds into an account designated by the Metropolitan Government for disposition. The Board agrees that such designated funds shall be used exclusively for supporting all related costs incurred by the Metropolitan Government in administering, overseeing, and operating the Program (which includes, without limitation, supplementing the salaries of Metropolitan Government employees utilized in administering the Program) and, *that, further,* the Board irrevocably delegates to the Metropolitan Government all authority and power to accept, deposit, manage, control, obligate, and expend the designated funds for such lawful purposes of the Program as contemplated in the Ordinance without seeking prior approval from the Board. Upon reasonable request by the Board, the Metropolitan Government shall provide an accounting of all receipts and expenditures of the designated funds. Further, the Board shall not use the rights granted under this Agreement in any manner that disrupts or adversely affects its duties and responsibilities.

5. Compensation. The Board and the Director of Law or his designee may negotiate and agree to additional compensation for legal services from time to time as needed. Any compensation agreement will be attached as an exhibit to this agreement and filed with the Metropolitan Clerk. Any such compensation shall be approved by the parties prior to incurring any such expense. In accordance with the Ordinance, the Board is authorized to charge participating developers in the Program the cost of all legal fees.

6. Termination. Either party may terminate this Agreement at any time by providing the other party with ninety (90) days advance written notice of termination.

7. Notice. All notices, requests, demands, and other communications under this Agreement, or in connection therewith, shall be given to or be made upon the respective parties hereto as set forth on the page of this Agreement bearing the signature of the duly authorized officers of the Board and the Metropolitan Government in execution of the same, or to such other

address and to the attention of such other officer or persons as each of the parties hereto may specify by notice in writing to the other.

8. Contingent Fees. The Board hereby represents that it has not been retained or retained any persons to solicit or secure a Metropolitan Government contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this Interlocal Agreement, a breach of ethical standards.

9. Gratuities and Kickbacks. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal thereof. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards.

10. Assignment Consent Required. This Agreement may not be assigned by any of the parties without the prior written consent of the other parties hereto. In the event of such assignment, no party shall be discharged or released from any of its obligations or duties contained herein. NOTICE OF ASSIGNMENT MUST BE SENT TO THE ATTENTION OF THE DIRECTOR OF LAW, DEPARTMENT OF LAW, METROPOLITAN COURTHOUSE, SUITE 108, NASHVILLE, TN 37201, and to the Chair for The Health and Educational Facilities Board of The Metropolitan Government of Nashville and Davidson County, Tennessee.

11. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

12. Force Majeure. No party shall have any liability to any other party hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

13. Governing Law. The validity, construction and effect of this Agreement, and any and all extensions and/or modifications thereof, shall be governed by the laws of the State of Tennessee.

14. Venue. Venue for any litigation arising out of this Agreement shall be in the courts of Davidson County, Tennessee.

15. Severability. Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.

16. Modification of Agreement. This Interlocal Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

17. Partnership/Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

18. Waiver. No waiver of any provision of this Interlocal Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

19. Liability. In no event shall the Metropolitan Government bear any liability for any loss, expense, attorneys' fees or claims for injury or damages arising out of any act or omission in the performance of this Agreement by the Board. Likewise, the Board shall bear no liability for any loss, expense, attorneys' fees or claims for injury or damages arising out of any act or omission in the performance of this Interlocal Agreement on the part of the Metropolitan Government, it being the express intention of the parties hereto that neither should bear liability for injury or loss caused by the other party.

20. Maintenance of Records. The books, records, and documents of the Board, as they relate to any work done or money received under this Agreement, shall be maintained on behalf of the Board by the housing division of the Metropolitan Planning Department for a period of three (3) years from the date of the final payment, and shall be subject to audit at any reasonable time by the Metropolitan Government, the Metropolitan Auditor, or private audit firms under contract with and representing the Metropolitan Government. The records shall be maintained in accordance with generally accepted accounting principles.

21. Binding Effect. This Agreement shall not be binding upon the parties until it is approved by Metropolitan County Council and the Board and signed by all parties hereto.

IN WITNESS WHEREOF, the authorized representatives of the parties have affixed their signatures below with the intent to make this Interlocal Agreement effective as of the date first written above.

THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY:

Mayor

APPROVED AS TO AVAILABILITY OF
FUNDS:



Director of Finance

APPROVED AS TO FORM AND
LEGALITY:



Metropolitan Attorney

FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:

Metropolitan Clerk

THE HEALTH AND EDUCATIONAL
FACILITIES BOARD OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY:



Chairman

ATTEST:



Secretary