

INTERLOCAL AGREEMENT

This Interlocal Agreement is entered into this ____ day of _____, 2022, 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 Industrial Development Board of the Metropolitan Government of Nashville and Davidson County (hereinafter called the "Board").

WITNESSETH:

WHEREAS, on May 5, 1959, the Metropolitan County Council of the Metropolitan Government (the "Council") adopted Resolution No. 59-1740 approving the certificate of incorporation of the Board; and,

WHEREAS, the Board is a public corporation performing a public function pursuant to Tennessee Code Annotated Section 7-53-101, et seq. ("the Act"); and,

WHEREAS, the Metropolitan Government and the Board have an interest in the economic development of the Metropolitan Government area; and,

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

WHEREAS, pursuant to a previous interlocal agreement that expires June 30, 2022, the Board currently operates with the assistance of key departments in the Metropolitan Government to administer its business and financial transactions and provide legal counsel; and,

WHEREAS, the Board has requested that the Metropolitan Government continue to provide administrative, financial and legal services for the Board; and,

WHEREAS, the Metropolitan Government has the resources to provide administrative and financial services for the Board through its Mayor's Office of Economic and Community Development and the Department of Finance, and the ability to provide legal services through its Department of Law; and,

WHEREAS, in order to enable the Board to fulfill its obligations under Title 7, Chapter 53 of the Tennessee Code Annotated and its certificate of incorporation, the Metropolitan Government has determined that it will benefit the public welfare to provide administrative, financial, and legal services to the Board; 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. Term of Agreement. The term of this Agreement, and the duties and responsibilities of the parties hereunder, shall take effect upon approval of the Council of The Metropolitan Government of Nashville and Davidson County and shall extend through June 30, 2027, unless terminated earlier as provided herein.

2. Services Provided. The Board hereby requests and the Metropolitan Government agrees to provide administrative, financial and legal services to the Board generally and specifically as follows:

a. The Director of the Office of Community and Economic Development or his designee will handle administrative matters as directed from time to time by the Board and act in the role of Executive Director for the Board; and,

b. The Director of Finance or her designee will maintain accounts and funds on behalf of the Board; and,

c. The Director of Finance or her designee will handle all other financial matters as directed from time to time by the Board; and,

d. The Director of Law or his designee will provide general legal counsel to the Board as needed.

3. Duties of Board. The Board shall continue to conduct its business pursuant to Title 7, Chapter 53 of the Tennessee Code and its certificate of incorporation. The Board shall maintain with the Metropolitan Government all cash on deposit for the duration of this Interlocal Agreement and any extensions thereto. Upon the execution of any transaction, the Board shall deposit all appropriately designated funds into an account designated by the Metropolitan Government for disposition. Further, the Board shall not use the rights granted under this Interlocal Agreement in any manner that disrupts or adversely affects its duties and responsibilities.

4. Compensation. The Board and the Director of Law or his designee shall negotiate and agree to 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.

5. Termination. The parties hereto may terminate this Interlocal Agreement at any time by providing the other party with ninety (90) days advance written notice of termination.

6. Notice. All notices, requests, demands, and other communications under this Interlocal 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 Interlocal Agreement bearing the signature of the duly authorized officers of the Board and the Metropolitan Government in execution of this Interlocal Agreement, 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.

7. 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.

8. 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 Interlocal Agreement, a breach of ethical standards.

9. Assignment Consent Required. This Interlocal 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 THE MAYOR'S OFFICE OF ECONOMIC AND COMMUNITY DEVELOPMENT, METROPOLITAN COURTHOUSE, SUITE 102, NASHVILLE, TN 37201, and to the Chair for the Industrial Development Board of the Metropolitan Government.

10. Entire Agreement. This Interlocal 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.

11. 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.

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

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

14. Severability. Should any provision of this Interlocal 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 Interlocal Agreement.
15. Modification of Agreement. This Interlocal Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
16. 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.
17. 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.
18. 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 Interlocal 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.
19. Maintenance of Records. The books, records, and documents of the Board, as they relate to any work done or money received under this Interlocal Agreement, shall be maintained 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.

20. Binding Effect. This Interlocal Agreement shall not be binding upon the parties until it is approved by Metropolitan County Council and the Industrial Development 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:

Kelly Flannery

Director of Finance

APPROVED AS TO FORM AND
LEGALITY:

[Signature]

Metropolitan Attorney

ATTEST:

Metropolitan Clerk

INDUSTRIAL DEVELOPMENT
BOARD OF THE METROPOLITAN
GOVERNMENT OF NASHVILLE AND
DAVIDSON COUNTY:

Nigel Hodger

Chair

ATTEST:

Cristina Oakeley

~~Secretary~~ Assistant Secretary