

**Received**  
**Planning Division**  
08/04/2023

Metro Contract 937500

**EXCLUSIVE NEGOTIATING AGREEMENT**  
**Metro - Elmonica Parcel**  
**17030 SW Baseline Road, Beaverton, Oregon**

THIS EXCLUSIVE NEGOTIATING AGREEMENT (the "Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between Metro, an Oregon municipal corporation and REACH Community Development Corporation, an Oregon nonprofit public benefit organization organized under IRS Section 509(a)(2) ("REACH").

**RECITALS**

A. Metro Council Resolution No. 12-4363 established the 2012 Transit Oriented Development ("TOD") Program Work Plan in order to implement the Metro TOD Program Strategic Plan, which establishes an objective, research-based investment framework that directs program activities where they will be most effective in stimulating private sector real estate development containing a mix of moderate to high intensity land uses, a physical or functional connection to the transit system, and design features that reinforce pedestrian relationships and scale needed to support the vibrant communities envisioned in the Region's 2040 Growth Concept.

B. Metro owns a parcel of real property located at the southwest corner of the intersection of SW Baseline Road and SW 170<sup>th</sup> Avenue, in Beaverton, Oregon, and .2 miles from the Elmonica MAX light rail station, commonly known as Tax Parcel 00100, Section 06DB of Township 1 South, Range 1 West, of the Willamette Meridian, legally described on Exhibit A (hereinafter referred to as the "Property"), which was purchased for the purposes of redevelopment into transit supportive uses.

C. Metro desires to enter into a Disposition and Development Agreement ("DDA") with a developer to commit to develop the Property as a mixed use affordable housing transit oriented development with at least 81 units of affordable housing regulated at no more than 60% of Area Median Income (the "Project"), and encumber the Project with Deed Restrictions and Covenants restricting the future use of the Project to affordable housing (the "Affordable Housing Covenant") for 60 years and TOD/Urban Centers supportive uses for 30 years (the "TOD Easement").

D. On November 2<sup>nd</sup>, 2020, the Metro TOD Program issued a Request for Qualifications, jointly with the City of Beaverton, soliciting developer teams for the Property.

E. A Selection Advisory Committee was convened by Metro and the City of Beaverton. REACH was selected from a field of responses for further negotiations and said selection was approved by the Metro TOD Steering Committee on April 28<sup>th</sup>, 2021 and the Metro Council via 7-day notice process on May 13<sup>th</sup>, 2021.

F. This Agreement provides REACH with the exclusive right to negotiate with Metro for purchase and development of the Property, provides REACH with exclusive “site control,” and confirms the basis upon which Metro and REACH (the “Parties”) are prepared to negotiate the terms of a DDA and related documents providing for the mixed-use affordable housing transit oriented development of the Property (the “Project”), which must be approved by the Metro TOD Steering Committee and the Metro Council.

In consideration for the mutual and reciprocal representations, promises and covenants herein, and for good and reasonable non-monetary consideration hereby acknowledged, the Parties Agree as follows:

### **TERMS**

1. Good Faith Exclusive Negotiations. Metro and REACH agree and covenant to negotiate the terms of the DDA and any intervening Memoranda of Understanding (as defined below) in good faith. Metro acknowledges that REACH has expended substantial time and expense, and will continue to expend time and expense, in preparing its initial proposal, conducting its due diligence, providing the community involvement process, and refining its development proposal. During the term hereof, Metro agrees that REACH will have the exclusive right to conduct due diligence and to negotiate with Metro for the rights to develop the Property, and that Metro will not accept, solicit, pursue or entertain any other offers or other indications of interest with respect to the Property for any development, sale or other transaction.
  
2. Duration. The initial term of this Agreement is 24 months from the Effective Date. This Agreement shall automatically expire upon execution and delivery of the DDA, which shall thereafter control the rights of the Parties with respect to the Property. If the DDA remains unexecuted at the conclusion of the initial Term, this Agreement will automatically extend for up to two 120-day renewal terms, unless either party provides written notice on or before expiration of intent not to renew. Either Party may unilaterally terminate this Agreement upon ten days’ notice in writing if latent conditions are discovered on the Property or events occur that would, presently or with the passage of time, prevent the entry into a DDA, or if the other party makes a material misrepresentation in the course hereof, otherwise fails to act in good faith, or if a party becomes insolvent, or if, in the terminating party’s reasonable estimation, otherwise becomes unable to perform as set forth below and in the Base Development Criteria.
  
3. Developer Qualifications - Financial Capacity.
  - 3.1 REACH was selected based on the skills and qualifications of the REACH team, set forth in the REACH response to the RFQ, including REACH CDC, Colas Construction, Salazar Architects, and Bienestar. The team members and key personnel of each team member are listed on Exhibit B. REACH must consult with and obtain pre-

approval before replacing team members or replacing or substituting the named key personnel of any team member.

3.2 REACH will submit to Metro evidence sufficient to Metro in its sole discretion to establish sufficient working capital to fund required pre-development work. REACH represents and warrants that said materials constitute a true and complete depiction of REACH's ability to undertake and successfully complete the Project contemplated herein. The required materials are outlined in Exhibit B.

4. Base Development Criteria and Design Guidelines. The Base Development Criteria and Design Guidelines are an expression of Metro's expectations with regard to the transaction contemplated herein, and shall serve as guidance during the negotiations among the Parties, but they are not mandatory minimum criteria. The Base Development Criteria and Design Guidelines are attached as Exhibit C.
5. Performance Timeline. The Performance Timeline attached as Exhibit D establishes the good faith expectations of the Parties for performance during the duration of this Agreement. Unless a specific date is set forth, the times for performance in the Timeline establish ranges and/or estimates and not strict deadlines.
6. Required City Engagement/Approvals. The parties agree that prompt and regular engagement with the City of Beaverton, Metro TOD Program, and Metro's Affordable Housing Program will be essential to Project success. The Key Meetings/Milestone Schedule attached as Exhibit D establishes the minimum frequency, timeline and content of this engagement.
7. Required Community Coordination. The Parties recognize that the consideration of community comment and input is an important prerequisite to robust community support for a successful project. Providing notice and an opportunity for community input and comment on the project design is a precondition to execution of the DDA (the "Community Coordination"), and must be accomplished as follows:
  - 7.1 Salazar Architects will lead 4 to 6 meetings with the Project Advisory Committee (PAC).
  - 7.2 REACH will attempt to select members for the PAC from a diverse set of organizations and backgrounds that will be able to inform the needs of culturally specific residents
  - 7.3 REACH anticipates the PAC will be made up of 8-12 residents, including up to 3 existing residents of REACH communities.
  - 7.4 REACH will meet with the City of Beaverton's Housing Cohort and Housing Technical Advisory Group to discuss the project and solicit feedback.
  - 7.5 One member of the PAC will also be a member of Beaverton's Housing Technical Advisory Group

7.6 At least one neighborhood meeting as required by the City of Beaverton's land use entitlement process.

8. Metro Approvals.

8.1 Approval of 90% Design Drawings by TOD Steering Committee and the Metro Chief Operating Officer.

8.2 Approval (if applicable) of the inclusion of other adjacent property in the plan of development for the Property, as described in Section 9 below.

8.3 Approval of the terms of DDA, including but not limited to land value write down and corresponding land sale price, Metro TOD Grant contribution, site plan, exterior elevations, description of exterior building materials, and development program (including unit mix, size, AMI level, and parking) and Design Development Drawings at 90% level or greater by TOD Steering Committee and Metro Council.

8.4 If the Metro Council so elects, the DDA must be approved by majority vote of Metro Council at a regular meeting.

9. Development Assistance and Purchase Price.

9.1 Purchase Price. The Parties anticipate that the purchase price of the Property will be discounted from its fair market value (the "Land Value Write-Down"). Said eligible discount will reflect the impact to the Property's fair market value resulting from the required development density, and other Metro requirements on the Property to be included in the DDA, including but not limited to: Metro's TOD real covenants, affordable housing covenants requiring the construction of at least 81 units of affordable housing to be regulated at no more than 60% of Area Median Income for 60 years,. The current estimate of the purchase price is \$100.

9.2 Residual Value Appraisal. The Land Value Write-Down and resulting purchase price to be paid for the Property by REACH will be no less than the reported "Residual Value." The Residual Value of the Property will be established by a third party appraisal obtained by Metro and will reflect the impact to the Property's fair market value resulting from the required development density and other Metro requirements on the Property to be included in the DDA, including but not limited to: Metro 's TOD real covenants, affordable housing covenants requiring the construction of at least 81 units of affordable housing to be regulated at no more than 60% of Area Median Income for 60 years, structured parking costs; and costs of concrete podium structures. It will be an obligation of REACH to provide adequate and timely documentation of costs for which it is seeking consideration in calculating the Residual Value of the land.

9.3 Other City and Metro Contributions

- Vertical Housing Tax credits are assumed.

- 4% Low Income Housing Tax Credits are assumed.
- A Metro TOD contribution is proposed as part of the financing via Metro TOD Grant Agreement. The amount of the Metro TOD Grant will be determined by Metro TOD staff based on the Metro TOD Program work plan subject to Metro TOD Steering Committee and Metro Council approval.

9.4 Inclusion of Other Property. Metro and REACH will cooperate in an evaluation of alternative development scenarios if REACH, or REACH and other third-party partners, obtain site control of the lands surrounding the Property. Metro may agree to include the Property in a larger redevelopment scenario at its sole discretion, via amendment to this ENA and inclusion in the DDA. Base Development Criteria, all other terms and conditions of this ENA, and any further terms and conditions deemed necessary or prudent by Metro, in its sole discretion, must be satisfied by REACH, including the endorsement of the 90% design drawings for doing so by the Metro TOD Steering Committee and the Metro Chief Operating Officer. Timelines may be adjusted to incorporate the Property and Project into a larger alternative development scenario, at Metro's sole discretion.

10. Diversity and Inclusion. REACH will pursue diversity and inclusion goals, including:

- 10.1 REACH will provide an early project awareness campaign for advance notice of bidding to encourage subcontractor businesses certified by the Certification Office for Business Inclusion and Diversity ("COBID") in participating in the Project construction.
- 10.2 REACH will provide a plan for and achieve COBID subcontractor participation in the Project construction meeting or exceeding 35% of the total construction cost with an aspirational goal of 50% for hard costs and 75% for professional services.
- 10.3 REACH will regularly report to Metro and the City of Beaverton on COBID participation during the project and upon completion.

11. DDA and Preconditions to Conveyance.

- 11.1 Metro's commitment to convey the Property for the Project approved by Metro will be formalized within the DDA. Key areas to be addressed in the DDA will include but not be limited to: the final design drawings and development program, including the incorporation of the Property into a larger REACH redevelopment that involves neighboring properties, if applicable; a detailed timeline for performance; sources and uses of funds; replacement or substitution of REACH development team members or ownership, if any; affordable housing covenants requiring the construction of at least 81 units of affordable housing to be regulated at no more than 60% of Area Median Income for 60 years; the final Land Value Write-Down; Property sale price and TOD Grant funding; remedies and reconveyance provisions

for failure to progress or perform (given due consideration to typical requirements of LIHTC investors and construction lenders); and monthly construction monitoring reports and copies of all draw requests.

- 11.2 The conditions precedent to entry into the DDA include but are not limited to:
  - 11.2.1 To Metro's satisfaction, in its sole discretion, that there have been no material changes to REACH's team, its qualifications and financial capacity since approval of the ENA, including no changes to the team member firms
  - 11.2.2 Satisfactory conduct and conclusion by REACH of inclusive and accessible community coordination, including items in Required Community Coordination section of ENA, must be completed and feedback must be incorporated into design to the extent feasible.
  - 11.2.3 Metro approval of the sources and uses, financing commitments and other due diligence as requested by Metro.
  - 11.2.4 Establishing a Construction Performance Timeline that is satisfactory to Metro.
  - 11.2.5 Metro Transit Oriented Development Steering Committee and Metro Chief Operating Officer approval of the 90% design drawings, land value write-down, TOD easement contribution, and authorization to enter into a DDA on legal terms satisfactory to the Metro Attorney's Office.
  - 11.2.6 Metro Council approval to enter into a DDA.
- 11.3 The DDA conditions precedent to closing and conveyance will include but not be limited to:
  - 11.3.1 Execution of financing agreements consistent with the plan set and sources and uses in DDA.
  - 11.3.2 Execution of construction contract consistent with plan set and sources and uses in DDA.
  - 11.3.3 Metro approval of the permit application, permit application plan set, final project plans and issuance of building permits consistent with the 90% design drawings in the DDA.
  - 11.3.4 Final Metro Housing Bond funding authorization
  - 11.3.5 Award of Low Income Housing Tax Credits from Oregon Housing Authority
  - 11.3.6 Securing a predetermination letter from the Oregon Bureau of Labor and Industries establishing that prevailing wage laws do not apply to the Project, or in the event that such wage laws do apply, that adequate sources exist to pay any additional construction costs likely to be incurred as a result.
  - 11.3.7 Recording of the Affordable Housing Covenant and TOD Easement.

- 11.3.8 Conditions precedent for the benefit and protection of Metro, related to the incorporation of the Property into a larger REACH redevelopment that involves neighboring properties, if applicable.
- 11.3.9 In the case of a combined market rate and affordable housing project Metro will not convey title until final Financial close of the Metro Housing-Bond financed portion of the project.

12. Co-application/Cooperation.

- 12.1 Metro and REACH shall be co-applicants on any land use permit application sought in connection with this Agreement or subsequent Memoranda issued during the term thereof. REACH shall bear responsibility for all land use application and permit fees, unless otherwise agreed to by Metro as stipulated in an Amendment to this Agreement.
- 12.2 Metro and REACH shall each promptly provide to the other all information reasonably related to the Property and the Project which may be obtained without material expense, upon written request. Metro and REACH shall cooperate in connection with any zoning and development code amendments, applications, permits, approvals or entitlements sought by REACH from any governmental authorities with respect to the Project, including easements, provided that Metro shall not be required to incur any material cost or liability in connection with such applications, permits or approvals.
- 12.3 Upon request, Metro will promptly execute and record a Memorandum of ENA to satisfy the "site control" requirements of REACH's financing application process.

13. Due Diligence. REACH may conduct due diligence and inspections of the Property, including such physical, legal, and engineering inspections, tests and investigations as it may deem necessary or desirable, including soils and environmental studies. Such studies and investigations may include, without limitation, zoning, land use, environmental, title, design review, covenants, conditions and restrictions, financing, leasing markets, project feasibility and related matters (the "Due Diligence Information"). The scope and cost of the due diligence and inspections shall be the responsibility of REACH. REACH shall provide Metro copies of Due Diligence Information upon request. In the event that REACH elects not to proceed with the DDA or development of the Project, REACH shall provide to Metro copies of all studies, including environmental and soils studies, surveys, title reports and similar information developed during the Due Diligence by REACH.

14. Memoranda of Understanding. Tentative agreements on the terms of the Disposition and Development Agreement may be memorialized in a written Memorandum of Understanding ("MOU"), or series of such memoranda, during the Term of this Agreement. Any such MOUs will be non-binding but will provide the continuing framework for final negotiations and preparation of the DDA.

15. Access. Metro shall provide REACH full access to the Property for the purpose of conducting Due Diligence. REACH shall repair or restore any damage caused by the entry of REACH or its agents upon or under the Property.
16. Indemnity and Insurance. REACH hereby agrees to indemnify, defend and hold Metro, including their appointed and elected officials, officers, employees and agents, harmless from and against any and all claims for injury to persons or damage to property caused by or resulting from the acts or neglect of REACH or its representatives or consultants on or about the Property. During the term of this Agreement, REACH shall maintain insurance with respect to its activities on or about the Property, naming Metro as an additional insured, in amounts as follows: (i) commercial general liability insurance with a combined single limit of not less than \$1,000,000 per occurrence and with at least \$2,000,000 general aggregate; (ii) auto liability insurance with combined single limit of \$1,000,000 per occurrence; (iii) employers liability insurance with a limit of not less than \$1,000,000; and (iv) in addition to the primary limits specified in (i) and (ii) above, excess liability insurance with a limit of not less than \$4,000,000 for each occurrence and in the aggregate. The indemnity required under this Section 15 shall survive termination of this Agreement.
17. No Assignment. Neither party shall assign or transfer its interest in this Agreement or the Property until termination of this Agreement or execution and delivery of the DDA.
18. Brokers. Metro and REACH each represent and warrant to the other that no broker, finder, or other representative has acted on its behalf in connection with this Agreement. Metro and REACH agree to indemnify, defend and hold the other harmless from any claim or liability for any fee, commission or other compensation with respect to this Agreement, the DDA or other transactions contemplated hereby, asserted by any other broker, finder or other representative claiming through the indemnifying party. This Section 18 shall survive termination of this Agreement.
19. Confidentiality. Metro and REACH agree that all information submitted by REACH during the term hereof is submitted on the condition that Metro keep said information confidential. Metro agrees not to disclose said confidential information provided by REACH, including but not limited to financial statements regarding REACH or the Project, and pro forma information. This nondisclosure agreement shall survive termination of this Agreement, but shall not apply to the extent any such information is publicly available, has been disclosed by other parties or is required to be disclosed by the Multnomah County District Attorney under Oregon public records laws.
20. Communications with the Public. Both parties shall work in good faith to coordinate project related public communications including press releases, statements to the media, and public testimony.
21. Governing Law. This Agreement shall be governed by the laws of the state of Oregon.



- 22. Time of the Essence. Time is of the essence of this Agreement.
- 23. Amendments. This Agreement may be amended only by the written agreement of the Parties hereto.
- 24. Notices. All notices given under this Agreement must be in writing and either (i) personally delivered, (ii) delivered by courier service, or (iii) delivered by certified mail, postage prepaid, return receipt requested, as follows:

To Metro: Metro Development Center  
 Megan Gibb TOD Program Manager  
 600 NE Grand Avenue  
 Portland OR 97232

To REACH: REACH  
 Attention: Alma Flores  
 Director of Housing Development  
 4150 S Moody Ave Portland OR 97239

All notices shall be deemed effective upon receipt. Any party may from time to time change its address for purposes of this Section by notice in writing to the other party.

- 25. Binding Effect. During the Term hereof and any extensions thereto, the Parties shall negotiate in good faith to complete and execute the definitive DDA upon terms and conditions consistent with this Agreement, any amendments thereto, and the MOUs. No sale agreement or other right, obligation or estate in land shall be created except by delivery of the definitive DDA and all other related and necessary instruments, duly authorized by the Metro Council, and all necessary REACH corporate action and executed by authorized representatives of the Parties. If the DDA is not executed and delivered prior to expiration of the Term and any extensions thereto, or if REACH elects, in its sole discretion, by notice in writing to Metro not to pursue development of the Project, this Agreement shall terminate and be of no further force or effect, except Sections 13, 16, 18, 19 and 21 hereof, which shall survive termination. If during the course of negotiations it becomes clear that the Parties will not reach an agreement, REACH shall not unreasonably withhold consent to early termination of this Agreement.

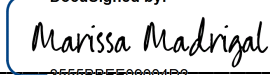
REACH Community Development Corp.

By: 

Title: Director of Housing

Date: September 10, 2021

METRO, an Oregon municipal corporation

DocuSigned by:  


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 Marissa Madrigal  
 Chief Operating Officer

Date: 9/27/2021

**List of Exhibits:**

Exhibit A: Legal Description

Exhibit B: Developer Qualifications

Exhibit C: Base Development Criteria and Design Guidelines for Negotiations

Exhibit D: Performance Timeline

## EXHIBIT A

### Legal Description

PARCEL I: A tract of land In Section 6, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Beaverton, County of Washington and State of Oregon, more particularly described as follows: Beginning at a point on the South line of the L. A. Sparks Donation land Claim No. 59, which bears South 89°57'30" East 515.7 feet from the Southwest corner of said Donation Land Claim; said point of beginning being the Northwest corner of that tract described in Deed to Albert Collins, et ux, In Deed Book 404, Page 551, Washington County Deed Records; thence South 0° 35' West along West line of said Collins tract and the Southerly extension thereof 280 feet to a point; thence North 89°57'30" West 124.7 feet to the Southeast corner of that tract described in Assignment of Contract to James O. Alex, et ux, in Book 503, Page 148, Washington County Deed Records; thence North 0°35' East along the East line of said Alex tract 280 feet to a point on the South line of said Donation Land Claim; thence South 89°57'30" East 124.7 feet to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to the public for road purposes by Deed recorded September 21, 1981 in Fee No. 81-031973.

PARCEL II: A tract of land In Section 6, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Beaverton, County of Washington and State of Oregon, more particularly described as follows: Beginning at a point on the South line of the L.A. Sparks Donation Land Claim No. 59, which is South 89°57 1/2' East 515.7 feet from the Southwest corner of the Sparks Donation Land Claim and running thence South 0°35' West (at 30.0 feet an iron rod) for a distance of 165 feet to an iron rod; running thence South 89°57 1/2' East 170 feet to an iron rod set on the East line of that certain tract of land conveyed to Sadie E. Collins by Deed recorded on Page 170 of Book 148, Washington County, Oregon, Deed Records; running thence North 0°35' East along the East line of the Collins tract for a distance of 165 feet to the Northeast corner thereof; running thence North 89°57 1/2\* West 170 feet to the place of beginning. EXCEPTING THEREFROM that portion conveyed to the public for road purposes by Deed recorded September 21, 1981 in Fee No. 81-031973.

## **Exhibit B**

### **Developer Qualifications**

#### **Key Team Members**

REACH CDC

- Alma Flores, Director of Housing Development

Colas Construction

- Marc-Daniel Domond, Executive Project Manager

Salazar Architects

- Matt Bokar, Project Manager

Bienestar

- Gracie Garcia, Director of Community Services

#### **Materials for Proof of Financial Capacity**

Annual Report

Audited or Certified Financial Statement for most recent fiscal year

Corporate By-Laws

Preliminary pro-forma for proposed development project

## EXHIBIT C

### Base Development Criteria and Design Guidelines for Negotiations

#### Program

- At least 81 total units
  - At least 48 combined studio and one-bedroom units
  - At least 33 combined two-bedroom and three-bedroom units
- At least 33 units at 30 percent AMI or below and at least 47 units at 60% AMI or below.

#### Design Guidelines

Design concept as described in RFQ with the following modifications:

- Pedestrian and transit oriented urban design that encourages walking and transit use.
- Mix of proposed common area programming that is driven by a community engagement process and anticipates a diverse spectrum of resident and staff needs.

#### Approach

- Minimum 35 percent COBID participation with an aspirational goal of 50 percent for hard costs and 75 percent for professional services.
- REACH tenant applicants based on low barrier screening criteria designed to limit frequent denials based on lack of rental history, credit history, income insufficiency, criminal backgrounds for low-level offences, and drug possession charges that are no longer illegal under State Law.

## Exhibit D

### Performance Timeline

August 2021	Metro Housing Bond concept endorsement
Summer 2022	Project Advisory Committee (PAC) Meeting #1
Winter 2022	Finalize design concept and location
TBD	TOD Steering Committee meeting – 50% design development update
TBD	PAC Meeting #2
TBD	PAC Meeting #3-5 (TBD)
TBD	Presentation of 90% Design Drawings and DDA to TOD Steering Committee
TBD	TOD Steering Committee DDA approval
TBD	PAC Meeting #6+
TBD	REACH 4% LIHTC application
TBD	Metro Housing Bond Final Endorsement