

**AGREEMENT BETWEEN
THE CITY OF ROYAL OAK
AND OAKLAND COUNTY**

This binding agreement dated the _____ day of _____, 20____ is made by the City of Royal Oak, a Michigan Municipal Corporation, with offices at 203 S. Troy Street, Royal Oak MI 48067 (the “City”) and the Oakland County (“OC”), a Michigan Municipal Corporation, with office at 1200 N. Telegraph Road, Pontiac MI 48341.

Both parties agree to the following:

Section 1 - Purpose

The City is a recipient of federal funds administered by the U.S. Department of the Treasury and distributed via assistance listing number 21.027. The American Rescue Plan Act (ARPA) authorized the Coronavirus State and Local Fiscal Recovery Fund (SLFRF) to help local governments respond to the COVID-19 public health emergency and its negative economic impact. The Royal Oak City Commission allocated \$1,950,000 of its ARPA funds to financially assist the construction of new multiple-family affordable housing development within the city.

In 2022, the Oakland County Board of Commissioners (OCBC) created and initially funded the Oakland County Housing Trust Fund (OCHTF) in an ongoing effort to increase the availability of affordable or attainable rental and homeowner occupied housing throughout Oakland County. The OCHTF supports the development and preservation of affordable, attainable, workforce, and mixed-income housing by leveraging funding with the financial resources of the private sector and other government funding sources.

The OCHTF is governed by a 7-member board that, amongst other responsibilities, reviews and provides recommendations to the OCBC whether to fund applicants that create and preserve affordable housing.

Lockwood Development Company, Inc. (Lockwood) is under contract to purchase the surface parking lot on E. Third Street at Knowles Street in downtown Royal Oak. Lockwood envisions the construction of an approximately \$20 million dollar, 5-story mixed-income building with 51 units (36, 1-bedroom units & 15, 2-bedroom units) with at-grade and lower-level parking. The conceptual project would create 34 units occupied by households at no greater than 60% of annual area median income. These units will be preserved as affordable for no less than thirty (30) years.

Lockwood has submitted an application to county staff for funding from the OCHTF. Lockwood has also asked the Royal Oak City Commission to provide \$1,950,000 of financial assistance to their project.

The City is aware that regulations do not prohibit ARPA funds from being leveraged together to a singular project. Therefore, the Royal Oak City Commission wishes to transfer ARPA funds to the OCHTF to specifically assist Lockwood’s conceptual Royal Oak project.

On _____, the OCBC approved, by written resolution, the acceptance of \$1,950,000 in ARPA funds from the City to specifically assist Lockwood’s conceptual Royal Oak

project.

The purpose of this Agreement is to provide capital to the Oakland County Neighborhood & Housing Development Division's Oakland County Housing Trust Fund to financially support Lockwood Development Company, Inc's mixed-income housing development at the vacant property legally described as Lot 30, except the west 300 feet, Assessor's Plat No. 9, T1N, R11E, Section 22 (Parcel Identification Number 25-22-104-016). These funds shall not be used by Oakland County for administration or oversight but shall be available in full to Lockwood should they fulfil their obligations to OC.

Section 2 – Schedule to Release City Funds

The City agrees to an electronic transfer of a sum not to exceed One Million Nine Hundred and Fifty Thousand Dollars (\$1,950,000) to OC's Oakland County Housing Trust Fund within sixty (60) days of Lockwood and OC entering into an agreement & Lockwood receiving local site plan approval, any related easement agreements, approval to establish a payment in lieu of real property taxes, etc.

Section 3 – General Condition

General Compliance

OC agrees to comply with the requirements of U.S. Department of the Treasury concerning the SLFRF under ARPA and the requirements and standards of the Office of Management & Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR Part 200. OC also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement.

Termination & Return Funds

Prior to the transfer of City funds, either party may terminate this Agreement by giving thirty (30) days written notice to the other party of its intention to terminate and an opportunity for consultation prior to termination.

In the event of a termination after the transfer of City funds, this Agreement shall be null and void. All funds shall be returned to the City in a timely manner.

Addendum

The Agreement duration may be extended or shortened via an addendum signed by a representative from the City and OC indicating exactly what is changing. Dollar amounts may not change without an adopted resolution by the Royal Oak City Commission.

Modification, Assignment or Subcontracting Absent Prior Written Consent

No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of the City and the OC. Any alterations, additions or deletions to the terms of this Agreement, which are required by the enactment of legislation, regulations and directives are automatically incorporated into this contract on the date designated by law, regulation or directive.

Indemnification and Hold Harmless

OC expressly agrees to indemnify and hold the City harmless against all losses and liabilities arising out of personal injury, bodily injury or property damages to the extent of any negligent

act, grossly negligent act, error or omission of OC or anyone acting on OC's behalf, in connection with, or incidental to, the Agreement, except that OC shall not be responsible to indemnify the City for any losses or damages to the extent that same are caused by or result from the gross negligence of the City or any other person or entity.

To the extent of OCs actual degree of fault, OC's obligation to indemnify and hold the City harmless shall include:

The obligation to defend the City from any such suit, action or proceeding, and;

The obligation to pay any and all judgments which may be recovered in any such suit, action or proceeding and/or any reasonable expenses including, but not limited to costs, attorney fees and settlement expenses which may be incurred, but only to the extent that such judgments and expenses are attributable to OC's actual fault.

OC agrees that it will not settle or resolve any claim or action against OC based upon its acts which includes, or may include, a claim or count against the City or its employees without obtaining a full and complete release in favor of the City with respect to any and all claims or counts against the City except those based upon the gross negligence or willful or wanton misconduct of the City or its employees.

For the purpose of indemnity clauses in the contract, "City" shall mean City of Royal Oak, its elected and appointed officials, employees and volunteers working on behalf of the City; losses and liabilities shall mean loss, cost, expense, damage, liability or claims, whether groundless or not; personal injury shall mean false arrest, erroneous service of civil papers, false imprisonment, malicious prosecution, assault and battery, libel, slander, defamation of character, discrimination, mental anguish, wrongful entry or eviction, violation of property, or deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States of America or the State of Michigan, for which OC may be held liable to its injured party in an action-at-law or a suit in equity or other proceedings for redress; bodily injury shall mean bodily injury, sickness or disease and mental injury which may be sustained or claimed by any person or persons; and property damage shall mean the damage and destruction of any property including the loss of use thereof.

OC and the City may agree to arbitrate any disputes with respect to the application of this indemnification clause.

Confidentiality

The use or disclosure of information by the City concerning services, applicants or recipients obtained in connection with the performance of the Agreement shall be restricted to the purposes provided under this Agreement. Such information shall not be used for any other purpose unless written approval is obtained from OC.

Disputes

The City shall notify OCC in writing of its intent to pursue a claim against OC for breach of any terms of this Agreement. No suit may be commenced by the City for breach prior to the expiration of ninety (90) days from the date of such notification. Within this ninety (90) day period, the City at the request of OC, must meet with an appointed representative of OC for the purpose of attempting to resolve the dispute. OC shall be given the opportunity to cure or remedy any breach within such ninety (90) day period.

Notices

Whenever under this Agreement provision is made for notice of any kind, unless otherwise herein expressly provided, it shall be in writing and shall be served personally or sent by registered or certified mail with postage prepaid to the designated representatives at the addresses supplied below.

City of Royal Oak
Joseph M. Murphy
Director of Planning
Community Development Depart
City of Royal Oak
203 S. Troy St
PO Box 64
Royal Oak, MI 48068-0064

P (248) 246-3285
joem@romi.gov

Oakland County
Kyle Hines
Oakland County Housing Trust Fund Manager
1200 N. Telegraph Rd.
Building 34E
Pontiac MI 48341

P (248) 310-3532
E hinesk@oakgov.com

Section 3 – Administrative Requirements

Financial Management

OC shall comply with the requirements and standards of the Office of Management & Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The final guidance is codified in the Code of Federal Regulations at 2 CFR Part 200, as applicable. OC shall also follow all directives and guidance of the US Department of the Treasury.

Uniform Administrative Requirements & Cost Principles

OC shall comply with the policies, guidelines, and requirements of 2 CFR Part 200, as applicable, as they relate to the acceptance and use of Federal funds.

OC shall be responsible for all Single Audit requirements under 2 CFR Part 200, Subpart F – Audit Requirements. If requested by the City's Finance or Community Development departments, OC will provide a digital copy of its Single Audit.

Documentation and Recordkeeping

1. OC agrees to maintain all records required by the Federal regulations specified in 2 CFR Part 200, Subpart D – Post Federal Award Requirements, that are pertinent to the project to be funded under this Agreement. Such records shall include but are not limited to:
 - a. Records providing a full description of the project undertaken.
 - b. Records demonstrating that the project undertaken meets the objectives of the SLFRF.
 - c. Records documenting compliance with the fair housing & equal opportunity components of SLFRF.
 - d. Other records necessary to document compliance with guidance provided by the US Department of the Treasury.
2. OC shall retain all records pertinent to expenditures incurred under this Agreement in compliance with the Retention Requirements for Records in accordance with Subpart D of 2 CFR Part 200.

3. OC records with respect to any matters covered by this contract shall be made available to the City and to the U. S. Department of the Treasury. Any deficiencies noted in any local or Federal audit report must be fully cleared by OC within thirty (30) days after receipt. Failure to comply with the above audit requirements will constitute a violation of this Agreement.

Procurement

1. Compliance with Federal Procurement Requirements
OC shall follow applicable federal procurement rules when purchasing services, supplies, materials, or equipment. The applicable federal regulations are contained in 2 CFR Part 200 (200.317-326).
2. OC shall ensure that the project complies with applicable provisions in the Build America, Buy America Act (BABA).

Fair Housing

OC shall carry out the Agreement in compliance with all applicable Federal laws and regulations pertaining to fair housing.

Access of Records

OC agrees to grant the City access to all records necessary to comply with federal regulations and requirements associated with the purpose of this Agreement.

Freedom of Information Act (FOIA)

By law, records of a governmental entity must be released under the Michigan Freedom of Information Act (FOIA) unless specifically exempted. Therefore, records created by and/or for the City pursuant to this Agreement, including, but not limited to, any correspondence, analysis, reports and related materials prepared, constitute property of the City and may be subject to release to the public under FOIA. The City has adopted a FOIA policy which establishes a procedure for receipt and review of FOIA requests. The City must respond to requests for non-exempt public records within five days of receipt unless the City requests a ten day extension. OC shall assist in compliance with the City's procedure.

OC agrees that all information kept because of this Agreement is public record. In the event that the City receives a FOIA request for public records, OC shall be required to disclose such information to the City for a determination, at the sole discretion of the City, as to whether or not that information is exempt from disclosure. The City agrees to give OC a copy of the FOIA request upon receipt by the City. Unless OC obtains an injunctive order from a court of competent jurisdiction within the time limits for response, the City shall release the non-exempt public records in accordance with a FOIA request.

Civil Rights

1. Compliance
OC agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, Executive Order 11246 as

amended by Executive Orders 11375 and 12086, and the City of Royal Oak's Human Right's Ordinance (Chapter 402).

2. Nondiscrimination

OC will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. OC will take affirmative action to insure that all employment practices are free from such discrimination.

Lobbying

OC certifies, to the best of its 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 the awarding of any federal contract, the making of any federal grant, the making of any 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 an 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.

OC 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, U.S. Code. Any person who fails to file the required certification shall be subject to penalty as authorized by Section 1352, Title 31, U.S. Code.

2 CFR Part 200, Subpart – Cost Principles, 200.450 Lobbying shall apply to this contract.

Section 4 - Acceptance

The undersigned indicate by their signatures that they are authorized to act on behalf of their respective party in this capacity.

CITY OF ROYAL OAK:

OAKLAND COUNTY:

By: Michael C. Fournier, Mayor

By: Kyle Hines,
Housing Trust Fund Manager

By: Melanie Halas, City Clerk

Approved To Form:

Nicolas Grochowski, City Attorney

07/25/2024 DRAFT