

REVIEWED

LEGAL COUNSEL

For Recording Purposes Only

**INTERGOVERNMENTAL AGREEMENT BETWEEN
CITY OF BEND and DESCHUTES COUNTY
For Property Acquisition**

Contract No. 2007- XXX

This Agreement is made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, ("County") and City of Bend ("City"), an Oregon municipal corporation.

RECITALS

WHEREAS, County and City are authorized pursuant to ORS 190.003 through 190.110 to enter into an intergovernmental agreement for the performance of any or all functions which a party to the agreement has the authority to perform; and

WHEREAS, the Bethlehem Inn is a 501(c)(3) corporation, operating as a nonprofit organization whose mission is to provide housing and services for the homeless; and

WHEREAS, the Bethlehem Inn has operated a homeless shelter in the City of Bend and is in need of a new facility, which County and City have identified and intend to acquire; and

WHEREAS, County and City find it in their mutual interest, as well as the public interest, to enter into this Agreement to facilitate the acquisition of property for sheltering homeless persons in Deschutes County.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is mutually agreed as follows:

1. EFFECTIVE DATE

This Agreement is effective upon the last date on which both parties have executed same.

2. PURPOSE

The purpose of this Agreement is acquisition of real property to be used by Bethlehem Inn for operation of a shelter for homeless persons in Deschutes County. While the property has been identified, closing of the property transaction is subject to several conditions, more specifically set forth herein. City will furnish \$230,000 of the down payment, and County will furnish \$20,000 for a total down payment of \$250,000. County will provide debt service payments estimated at \$18,000 per month until County's payments equal \$220,000. Thereafter County and City will share equally debt service payments and all other legal obligations. Bethlehem Inn will be responsible for any necessary modifications to

improvements on the property and thereafter will operate a homeless shelter. Bethlehem Inn will also be expected to purchase the property from City and County, the timing of which depends upon funding.

3. STATEMENT OF WORK

3.1 The subject property is located at 3705 N. Highway 97, Bend, Oregon.

3.2 Property purchase consideration is \$2.5 million (Purchase Price), \$250,000 payable at closing, and the balance payable to Property Owner pursuant to a promissory note, in equal monthly installments, with full satisfaction not later than thirty-one (31) months after closing.

3.3 Conditions precedent to closing:

3.3.1 Inspection of the Property and any improvements thereon to City's and County's satisfaction;

3.3.2 Title report demonstrating satisfactory title in the Owner;

3.3.3 Appraisal by qualified commercial real estate appraiser in the Bend area confirming that the Property has a current fair market value of no less than the purchase price.

3.3.4 Deed shall be placed in Escrow with instructions to release and record same upon payment of the purchase price.

3.3.5 Bethlehem Inn enters into a Lease with City, and eventually enters into a purchase agreement for the purchase of Property.

3.4 County will pay for costs of an appraisal and a Level I environmental assessment.

3.5 If the conditions precedent for Property closing are not satisfied or waived by both Parties, then this agreement shall terminate.

4. City's Obligations

4.1 Upon satisfaction of Conditions precedent to closing set forth in Section 3 above, City will execute a purchase agreement with the Property owner for acquisition of the Property for the Purchase Price, pursuant to the purchase terms outlined in Paragraph 3.2. City may enter into a conditional earnest money agreement and tender a promissory note, subject to conditions set forth herein and others in its sole discretion.

4.2 After County has paid \$220,000 worth of monthly installments, City and County shall equally share all costs of acquiring the property, including without limitation, monthly obligations on outstanding notes.

4.3 City shall enter into a Lease agreement with Bethlehem Inn under which Bethlehem Inn will be responsible for any necessary modifications and for operation of a shelter for homeless persons. The Lease will be subject to prior approval by County and provide for occupancy by approximately August 2007.

- 4.4 City shall enter into a purchase agreement with Bethlehem Inn and/or County under which Bethlehem Inn and/or County will acquire the Property from City upon terms mutually satisfactory to City and County, but consistent with this Agreement.
- 4.5 City shall cooperate with County in assignment of outstanding obligations and will execute necessary documents to transfer City's interest.
- 4.6 Purchase price to County/Bethlehem Inn shall be the principal balance of outstanding notes. Neither City nor County will be reimbursed for its share of the down payment.
- 4.7 If County and Bethlehem Inn fail to purchase the Property in accordance with Paragraph 5.2, then City may sell the property with the proceeds after payment of any costs associated with such sale, payable first to satisfy any outstanding notes and obligations, then to repay City the \$230,000 down payment, thereafter to repay County's \$240,000 in down payments and monthly debt service payments, and the balance, if any, to be shared equally between City and County.

5. County's Obligations

- 5.1 County will pay monthly obligations to the current Property Owner pursuant to the terms of then outstanding promissory notes. When County's payments under this paragraph reach \$220,000, then such monthly obligations shall be shared equally by County and City.
- 5.2 Subject to obtaining a sufficient Housing and Urban Development Community Development Block Grant or other sufficient grant funding, no later than thirty-one (31) months after closing of Property, or such longer period as City may expressly allow, County and/or Bethlehem Inn will purchase Property from City. Pursuant to such purchase, County and/or Bethlehem Inn shall assume or satisfy then existing notes, in favor of Property Owner.

6. BINDING EFFECT

The terms of this Agreement shall be binding upon and inure to the benefit of each of the parties and each of their respective administrators, agents, representatives, successors and assigns.

7. NON-DISCRIMINATION

Each party agrees that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, or age, suffer discrimination in the performance of this agreement when employed by either party.

Each party agrees to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- 10.1 Additionally, each party shall comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

8. ATTORNEY FEES

In the event an action, lawsuit or proceeding, including appeal there from, is brought for failure to fulfill or comply with any of the terms of this agreement, each party shall be responsible for its own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.

9. No WAIVER OF CLAIMS

The failure by any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision of this Agreement.

10. SEVERABILITY

Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this Agreement which shall remain in full force and effect.

11. INCORPORATION OF RECITALS

The recitals set forth above are hereby incorporated into and made a part of this Agreement.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties concerning the subject matter hereof, and supersedes any and all prior or contemporaneous agreements or understandings between the parties, if any, whether written or oral, concerning the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be modified or amended except by a writing signed by both parties.

COUNTY:

DATED this _____ of _____, 2007

BOARD OF COUNTY COMMISSIONERS

MICHAEL M. DALY, CHAIR

DENNIS R. LUKE, COMMISSIONER

ATTEST:

Recording Secretary

TAMMY BANEY, COMMISSIONER

CITY:

Attest:

Bruce Abernethy, Mayor

Patricia Stell, City Recorder