

INTERGOVERNMENTAL AGREEMENT

Contract Number [Enter Contract Number]

This Intergovernmental Agreement (this "**Agreement**") is made as of this ___ day of March, 2017 (the "**Effective Date**") by and between the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND HOUSING BUREAU ("PHB")**, and **MULTNOMAH COUNTY**, a political subdivision of the State of Oregon ("**County**"). PHB and County are referred to jointly in this Agreement as "**Parties**" and individually as a "**Party**."

RECITALS

- A. The Portland area is in an affordable housing crisis with low vacancy rates and limited quality affordable housing options. To provide some relief, PHB in partnership with County, the Portland Development Commission ("**PDC**"), and Home Forward, in an Affordable Rental Housing Notice of Funding Availability (the "**NOFA**"), made available in Fall 2015 up to \$61,600,000 in federal and local funds, as well as five sites and up to 100 project based Section 8 vouchers for development, rehabilitation and/or preservation of affordable housing.
- B. PHB implements the housing policies of the City of Portland (the "**City**") by administering a program to loan public funds to owners of housing projects. These public funds are loaned at terms which are more favorable than those at which private funds would be made available in order to encourage the development of affordable housing units.
- C. In fiscal year 2015, through the Home for Everyone Initiative ("**HFE**"), County made available Five Million Dollars (\$5,000,000.00) and created the Multnomah County Affordable Housing Development Fund ("**MCAHDF**") for development of affordable housing in Multnomah County, whether inside or outside the City.
- D. Based on PHB's considerable expertise in the development, issuance, evaluation, and administration of affordable housing solicitations, County contributed the HFE \$5,000,000 to the NOFA, with selection of County-funded projects subject to the criteria, evaluation and award process established by the MCADHF. Among other criteria, preference was given to projects that would deliver units quickly, cost-effectively and maintain long-term affordability. Subsidy per unit was to be dependent on size, amenities and amount of other public subsidy. County announced a goal of producing at least 125 units of housing with its \$5,000,000 investment, for an average County contribution of \$40,000 per dwelling unit.
- E. One purpose of the MCADHF is to foster innovation in public sector approaches to financing, acquisition, development, and management of affordable housing. County's NOFA evaluation team considered the mix of strategies proposed to acquire units with County's investment, and the demonstration value/replicability of proposed strategies in its selection of projects.
- F. County also designated the populations to be served with HFE-funded housing units as any segment of the very low-income population at 50% median family income (MFI) or below that is homeless or at risk of homelessness. County also announced that, while a proposal could serve a single population group (e.g., families with children, singles, etc.), County's NOFA evaluation team would consider the overall mix of housing being developed with its investment.

G. At the conclusion of the NOFA evaluation process, three (3) proposed projects were selected to receive County funding. The project sponsor, project name and amount of MCADHF funding are:

- (1) Central City Concern, 6905 North Interstate, \$1,240,000;
- (2) Central City Concern, Stark St. Apartments 1 & 2, \$1,500,000; and
- (3) Home Forward, Block 45, \$500,000 (collectively, the **"Original HFE Projects"**). The Original HFE Projects represent a County investment of \$3,240,000;

H. Subsequently, County has committed an additional \$1,760,000 for the Central City Concern, Eastside Health Center, which, together with the Original HFE Projects are collectively referred to as the **"HFE Projects"** and represent a collective County investment of \$5,000,000 (the **"MCAHDF Funding"**);

I. PHB is prepared and qualified to administer the HFE Projects and to assure County, through PHB's Regulatory Agreement (as hereinafter defined) entered into with each project sponsor (the **"Sponsor"**) that the HFE Projects will be developed, leased, operated and maintained in accordance with County's requirements set forth in the NOFA.

AGREEMENT

IN CONSIDERATION of the foregoing Recitals and the conditions, covenants and agreements set forth below, the Parties agree as follows:

1. **TERM.** The term of this Agreement shall be from the Effective Date to the expiration of the last Restriction Period specified in any of the Regulatory Agreements (as defined in Section 2[a] hereof) for the HFE Projects. This Agreement may be renewed beyond said last Restriction Period by mutual agreement of the Parties.
2. **RESPONSIBILITIES OF PHB.** PHB agrees to perform the following with respect to each of the HFE Projects:
 - (a) Execute a Regulatory Agreement with the Sponsor of each HFE Project, in substantially the form provided by PHB to County (each, **"PHB's Regulatory Agreement"**). The Regulatory Agreement includes reporting requirements to both City and County by the Sponsor;
 - (b) Prior to PHB's disbursement to each Sponsor of the MCAHDF Funding for that HFE Project, PHB shall record PHB's Regulatory Agreement as a lien against the real property upon which each of the HFE Projects is built and deliver a courtesy copy to County of each recorded Regulatory Agreement within ten (10) business days after recording;
 - (c) Forward or cause the Sponsor to transmit to County within ten (10) business days after PHB's receipt of same, an electronic copy of the annual report submitted by the Sponsor of each HFE Project, in accordance with Section 5 of each Regulatory Agreement;
 - (d) Forward or cause the Sponsor to transmit to County within ten (10) business days after PHB's receipt of same, an electronic copy of the affirmative marketing plan submitted by the Sponsor of each HFE Project, in accordance with Section 6 of each Regulatory Agreement;

(e) At all times during the Restriction Period, PHB will strictly enforce each Sponsor's obligation to provide the following Designated Units (as defined in each Regulatory Agreement) in the HFE Projects:

- (i) Central City Concern, 6905 North Interstate – 31 units designated for households with 50% of area median income or lower;
- (ii) Central City Concern, Stark St. Apartments 1 & 2 – 37 units designated for households with 50% of area median income or lower;
- (iii) Home Forward, Block 45 - 23 units designated for households with 50% of area median income or lower; and
- (iv) Central City Concern, Eastside Health Center, a minimum of 44 units designated for households with 50% of area median income or lower.

(f) Because the Eastside Health Center is funded exclusively by the MCAHDF Funding, County has agreed to pay an additional \$20,000 to PHB for its costs associated with construction and compliance monitoring of the project.

(g) At any time during the Restriction Period when PHB notifies the Sponsor of an HFE Project that it is in default of the Regulatory Agreement or when PHB or any HFE Project lender (of which PHB has notice) exercises any remedy against any such Sponsor, PHB shall provide courtesy copies to County of any such notices, demands, pleadings or documents of other actions commenced by PHB or any HFE Project lender against any Sponsor, to the extent that PHB receives copies of the same.

3. RESPONSIBILITY, RIGHTS & REMEDIES OF COUNTY.

(a) Within 15 business days of the Effective Date, County shall disburse to PHB the MCAHDF Funding for the HFE Projects along with the \$20,000 for the Eastside Health Center compliance and monitoring work.

(b) Upon any prohibited sale or transfer of an HFE Project, in violation of Section 8 of the Regulatory Agreement, which results in PHB exercising its right to declare the Note and all other indebtedness secured by the Trust Deed immediately due and payable in full, PHB shall account to County and deliver to County its pro-rata share, based on County's proportion of MCAHDF Funding of the Project, of all Note proceeds collected by PHB from the Sponsor, whether by legal action on the debt or by judicial or nonjudicial foreclosure of the Trust Deed and sale of the Project.

(c) Upon any change in use of an HFE Project, to which PHB consents as provided in Section 8(c) of the Regulatory Agreement but to which County does not consent, PHB shall account to County and deliver to County its share, based on County's MCAHDF Funding of the Project, of the Note balance due on the date of the change in use.

(d) In the event of a Sponsor default, as defined in Section 11 of the Regulatory Agreement, and upon PHB's failure to notify Sponsor of such default and require specific performance of the Regulatory Agreement or upon PHB's failure to exercise its other remedies provided in Section 12 of the Regulatory Agreement, County shall be entitled, thirty (30) days after written

notice to PHB specifying such failure(s), to declare PHB in default of this Agreement and to obtain specific performance of PHB's obligations under Section 2 of this Agreement as is reasonable based on the duration of the Project's prior compliance and performance.

4. **RECIPROCAL WARRANTIES, REPRESENTATIONS & COVENANTS.**

(a) **Authority.** Each Party represents and warrants to the other that it has full power, authority, and legal right to execute and deliver this Agreement and to incur and perform its obligations hereunder. The execution and performance by each Party of this Agreement has been duly authorized by all necessary action of each Party's governing body.

(b) **Funding Acknowledgement/Signage.** Any oral reports made to neighborhood, business, or other civic organizations, as well as informational releases to any members of the media should acknowledge work being done is based on a joint initiative of PHB and County and, if appropriate, financed with funds from the "Portland Housing Bureau and Multnomah County."

(c) **Indemnification.**

(i) Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall indemnify, defend and hold harmless PHB from and against all liability, loss and costs arising out of or resulting from the acts of County, its officers, employees and agents in the performance of this Agreement. The County shall have control of the defense and settlement of any claim that is subject to this paragraph. However, neither County nor any attorney engaged by County shall defend the claim in the name of PHB, nor purport to act as legal representative of PHB, without first receiving from the Portland City Attorney's Office, authority to act as legal counsel for PHB, nor shall County settle any claim on behalf of PHB without the approval of the Portland City Attorney's Office. PHB may, at its election and expense, assume its own defense and settlement.

(ii) Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, PHB shall indemnify, defend and hold harmless County from and against all liability, loss and costs arising out of or resulting from the acts of PHB, its officers, employees and agents in the performance of this Agreement. However, neither PHB nor any attorney engaged by PHB shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Multnomah County Attorney's Office, authority to act as legal counsel for County, nor shall PHB settle any claim on behalf of County without the approval of the Multnomah County Attorney's Office. County may, at its election and expense, assume its own defense and settlement.

5. **TERMINATION.** Unless earlier terminated in accordance with this Section 5, this Agreement shall remain in effect for the entire Term as defined in Section 1 hereof. This Agreement may only be terminated by mutual agreement of the Parties, or by either Party upon ninety (90) days' written notice (a) in the event of a material breach of this Agreement by the other Party, or (b) in the event the notifying Party has not received appropriations, allotments or other expenditure authority from its governing body sufficient to allow the Party to meet its obligations under this Agreement.

6. **INSURANCE.** Each Party shall be responsible for providing workers' compensation insurance as required by law. Neither Party shall be required to provide or show proof of any other insurance coverage.
7. **ADHERENCE TO LAW.** Each Party shall comply with all federal, state and local laws and ordinances applicable to this Agreement.
8. **NON-DISCRIMINATION.** Each Party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
9. **ACCESS TO RECORDS.** Each Party shall have access to the books, documents and other records of the other which are related to this Agreement for the purpose of examination, copying and audit, unless otherwise limited by law.
10. **BINDING EFFECT; ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns. However, neither Party will subcontract or assign any part of this Agreement without the written consent of the other Party.
11. **THIS IS THE ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the Parties.
12. **NO WAIVER; REMEDIES CUMULATIVE.** No failure or delay on the part of either Party to exercise any right, power or remedy shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof; nor shall the waiver of any single breach or default be deemed a waiver of any other, prior or subsequent breach. Any waiver, permit, consent or approval of any kind or character on the part of either Party of any provision or condition of this Agreement must be in writing and shall be effective only to the extent set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to the Parties, shall be cumulative and not alternative.
13. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, all of which shall constitute one agreement, binding on the Parties hereto, even though the Parties have not signed the same counterpart.
14. **INTEGRATION.** This Agreement and any other instruments or agreements required or contemplated herein constitute the entire agreement of the Parties hereto. This Agreement and any other instruments and agreements required or contemplated herein supersede all prior communications, representations or agreements, oral or written, between the Parties hereto and shall not be amended except in writing by the Parties hereto.
15. **AMENDMENT.** Any amendment of the terms of this Agreement must be in writing and must be signed by the Parties hereto.

16. **SEVERABILITY.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

CITY:

CITY OF PORTLAND, a municipal corporation of the State of Oregon acting by and through the **PORTLAND HOUSING BUREAU**

DO NOT EXECUTE

By: _____

APPROVED AS TO FORM:

By: _____

Lisa Gramp, Deputy City Attorney

COUNTY:

MULTNOMAH COUNTY,
a political subdivision of the State of Oregon

By: _____

Deborah Kafoury, Chair

REVIEWED AND APPROVED:

Jenny M. Madkour, County Attorney
For Multnomah County

By: _____

Kenneth M. Elliott

Assistant County Attorney