

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

Contract Number [Enter Contract Number]

This Intergovernmental Agreement (this “**Agreement**”) is made as of this x day of x , 2019 (the “**Effective Date**”) by and between the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon (“**CITY**”), acting by and through the **PORTLAND HOUSING BUREAU** (“**PHB**”), and **MULTNOMAH COUNTY**, a political subdivision of the State of Oregon (“**COUNTY**”) acting by and through the **JOINT OFFICE OF HOMELESS SERVICES** (“**JOHS**”). PHB and JOHS 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 has announced a \$77 million funding opportunity for new construction projects, property acquisitions, and the rehabilitation of existing buildings for affordable housing.
- B. This sum includes \$70 million in funds issued under a \$258.4 million dollar general obligation bond that was approved by Portland voters in November 2016, to create 1,300 affordable homes (“Portland’s Housing Bond”).
- C. PHB implements the housing policies of the City of Portland including without limitation, through the administration of programs pursuant to which PHB loans and grants public housing funds to owners and developers of housing projects. These public funds are provided 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.
- D. On November 9, 2017, the Board of County Commissioners adopted Resolution 2017-094 and directed the proceeds from the disposition of the Wapato Facility to be used to fund comprehensive housing stabilization strategies.
- E. On September 13, 2018, the County made available Four Million Dollars (\$4,000,000.00) through the Supportive Housing Fund 1521 (the “**County Funding**”) for development of at least 70 affordable housing units at the Westwind Apartments (“**Project**”) located at 333 NW 6th Avenue. The units will be developed to support those in the community who are living with serious disabilities and are, or are at imminent risk of being, chronically homeless in Multnomah County, whether inside or outside the City.

- F. Based on PHB's considerable expertise in the development, issuance, evaluation, and administration of affordable housing solicitations, JOHS proposes contributing the \$4,000,000 to the Spring 2019 Bond Opportunity Solicitation (BOS) for the aforementioned purpose of creating at least 70 affordable housing units at the Project.
- G. County also designated the populations to be served with JOHS funded housing units as any segment of the very low-income population (defined as a household earning 60% of Area Median Income or below) that is either chronically homeless, or that includes a member living with a severe disability and is either homeless or at imminent risk of homelessness.
- H. PHB is prepared and qualified to administer the Project and to assure County, through PHB's Regulatory Agreement (as hereinafter defined) that PHB will enter into with the Project sponsor (the "**Sponsor**") which agreement requires the Project to be developed, leased, operated and maintained in accordance with City of Portland's affordable housing requirements and to which, County will be a named third party beneficiary.

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 Westwind. This Agreement may be extended beyond the termination date of the last Restriction Period by mutual agreement of the Parties.
2. **RESPONSIBILITIES OF PHB.** PHB agrees to perform the following with respect to the Project:
 - (a) Execute a Regulatory Agreement with the Sponsor of the Westwind Project, in substantially the form provided by PHB to County ("**PHB's Regulatory Agreement**"). The Regulatory Agreement includes reporting requirements to PHB by the Sponsor;
 - (b) Prior to PHB's disbursement for the Project, PHB shall record PHB's Regulatory Agreement as a lien against the real property upon which the Project is built and deliver a courtesy copy to County 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 the Project, in accordance with the 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 the Project, in accordance with the Regulatory Agreement;

(e) Except in the event of foreclosure or default, or as otherwise negotiated between PHB and County, at all times during the Restriction Period, PHB will strictly enforce the Sponsor's obligation to provide the units in the Project to households with 60% of area median income or lower and who, prior to entering the units, are experiencing chronic homelessness or living with a severe disability and homeless or imminently at risk of homelessness (as defined in the Regulatory Agreement);

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

3. RESPONSIBILITY, RIGHTS & REMEDIES OF COUNTY.

(a) Within 15 business days following the Effective Date, County shall disburse to PHB the County Funding.

(b) Upon any prohibited sale or transfer of the Project, in violation 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, PHB shall account to County and deliver to County its Pro-Rata Share, based on County's proportion of the funding of the Project, of all Note proceeds collected by PHB, whether by legal action on the debt or by judicial or non-judicial foreclosure of the Trust Deed and sale of the Project. For calculation purposes, the Pro-Rata Share shall use only the following: A) PHB funding which includes all cash loaned to the Project plus the value of the land and/or buildings at the time of closing; and B) the County Funding. The Pro-Rata Share shall be calculated as follows: $B \div (A + B)$.

(c) Upon any change in use of the Project, to which PHB consents as provided in the Regulatory Agreement but to which County does not consent, PHB shall account to County and deliver to County its Pro-Rata Share of the Note balance due on the date of the change in use using the calculation methodology in Section 3(b) of this Agreement.

(d) In the event of a Sponsor default, as defined in 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 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 Sections 2 and 3 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: _____
Shannon V. Callahan, Director

APPROVED AS TO FORM:

By: _____
Wendy Hain, Senior 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