

Expanded Affordable Housing Funding Intergovernmental Agreement

This Intergovernmental Agreement ("Agreement"), effective September 1, 2023 ("Effective Date"), is between the City of Portland, a municipal corporation of the state of Oregon, and acting by and through the Portland Housing Bureau ("City" or "PHB"), and Multnomah County, a municipal subdivision of the state of Oregon ("County"). The City and County may be referred to jointly in this Agreement as the "Parties," or individually as a "Party."

RECITALS

- I. The City and Metro Regional Government, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter ("Metro"), entered into an Affordable Housing Bond Measure Program Intergovernmental Agreement, effective October 12, 2020 (the "AHB IGA"), under which Metro pays to the City proceeds from the Ballot Measure 26-199 bond (the "Housing Bond") to support the City's acquisition and construction of affordable housing within the City's boundaries, as further governed by the AHB IGA.
- II. As of June 30, 2022, the Housing Bond has earned over \$32 million in interest earnings and bond premium. On October 31, 2022, Metro proportionally allocated to Clackamas, Multnomah, and Washington counties (the "Counties") \$20 million in Housing Bond interest earnings to support immediate investments in affordable housing projects. Metro allocated \$9.088 million to Multnomah County (the "Allocated Earnings").
- III. The County requested that its eligible share of the Allocated Earnings be distributed to PHB for the acquisition and construction of regulated permanent supportive housing (PSH) within its jurisdiction on the County's behalf.
- IV. On July 3, 2023, PHB announced the 2023 Metro Bond Opportunity ("M-BOS Last Gap") solicitation, dedicating \$10 million to help close funding gaps in projects that are otherwise permit ready, in predevelopment, construction or lease-up. PHB invited proposals from housing development partners with multifamily projects that can help meet the City's Local Implementation Strategy goals for its share of the Housing Bond, in particular the 30% area median income (AMI) restricted units and PSH unit goals.
- V. In addition to the allocated earnings, Multnomah County allocated \$9.75 million of general fund dollars in program offer #30010 in Multnomah County's fiscal year (FY) 2024 budget, the County budgeted \$9.75 million general fund dollars (the "FY 2024 Funding") for affordable housing development and acquisition. The use of these funds was informed by an accompanying budget note, which proposed directing the FY 2024 Funding to PHB to increase the scale and speed of PHB's housing development and acquisition.
- VI. The County desires to expand PHB's M-BOS Last Gap solicitation by transferring to PHB the Allocated Earnings and the FY 2024 Funding. PHB believes that the PHB MBOS Last Gap can fund 400 + affordable housing units including PSH units.
- VII. The City wishes to receive the County's authorization to spend the Allocated Earnings and the FY 2024 Funding from the County.
- VIII. As more specifically provided below, the Agreement sets forth the Parties' understandings and

agreements regarding the City's use of the Allocated Earnings and the FY 2024 Funding.

AGREEMENT

1. **Recitals Incorporated.** All of the foregoing Recitals are true and correct and are incorporated herein as part of the Agreement for all purposes.
2. **Term & Termination.** The Agreement is effective as of the Effective Date and continues through December 31, 2024 ("Term"). The Parties may by mutual agreement extend the term of this Agreement beyond December 31, 2024. The Agreement may be terminated at any time by written agreement signed by the Parties.
3. **City's Obligations.** The City will use the Allocated Earnings and the FY 2024 Funding during the Term to acquire and rehabilitate properties to create more affordable housing within the City's boundaries, as provided below and in accordance with all relevant laws and the Housing Bond and AHB IGA.
 - 3.1. **AHB IGA.** Within six months of the Effective Date, the City will execute with Metro an amendment to the AHB IGA that addresses: (A) its receipt of the Allocated Earnings from the County; (B) using the Allocated Earnings for the Project, as defined below; and (C) the restrictions imposed on the City's use of the Allocated Earnings; namely: that the capital projects funded with the earnings be either: new construction or rehabilitation of unoccupied PSH units intended to be completed on a timeline of up to two years from date of Metro's final approval, or the acquisition and rehabilitation of existing units that are occupied as a shelter on an interim basis during rehab, intended to be completed on a timeline of up to four years.
 - 3.2. **The Project.** PHB will invest the remaining Allocated Earnings and all the FY 2024 Funding by: (A) providing capital to PSH developers and property owners with shovel-ready and/or ongoing projects in need of additional funding to finalize construction; and (B) directly acquiring affordable housing projects that are close to occupancy but not yet leased up (collectively, the "Project"). All units into which Allocated Earnings and the FY 2024 Funding is invested will either qualify as PSH, or as affordable housing for tenants whose income is 30% or less than the region's AMI.
 - 3.3. **Housing Choice Vouchers.** PHB has 50 committed Housing Choice Vouchers (HCV - Section 8) from Home Forward for the Project.
4. **County Obligations.** In addition to providing the funding to the City as stated in **Section 5**, and if requested by PHB, the County will provide supportive housing services (SHS) funding to the City for SHS and rent assistance. Such additional SHS will be made via an amendment to the Agreement that sets forth the compliance requirements for use of SHS funds.
5. **Payment.** PHB received the Allocated Earnings from Metro prior to the Effective Date. The County will distribute the FY 2024 Funding to the City within ten days of the Effective Date via a process mutually agreeable to the Parties' financial professionals.
6. **Project Contacts.** Each Party will identify an individual to serve as their respective point-of-contact for the other Party for all Project-related communications. Such contacts must be identified in a

writing sent to the other Party within 30 days of the Effective Date. A Party may change its point-of-contact under this section by sending to the other Party's contact point a notice identifying the new point-of-contact and providing their contact information.

7. **Reporting.** Each January, May, and September during the Term, and on the anniversary of the Effective Date, the City shall submit to the County a report describing its use of the Allocated Earnings and FY 2024 Funding and that includes such data as agreed to between the Parties.
8. **Risk Sharing.**
 - 8.1. **Notice.** If any third-party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third-Party Claim") against a Party that one or more of the Parties may have liability, the Party against whom the Third-Party Claim was directed shall promptly notify the other Party in writing of the Third-Party Claim and provide the other Party with a copy of the claim, process and all legal pleadings with respect to the Third-Party Claim that have been received.
 - 8.2. **City Indemnity.** Subject to the conditions and limitations of the Oregon Tort Claims Act (OTCA) and the Oregon Constitution, the City shall indemnify and hold harmless the County and Metro, and their officers, agents and employees, or any of them from any and all claims, actions, suits, loss, costs, expenses, and damages of any nature whatsoever, by any reason or arising out of any act or omission of the City, its officers, agents and employees, or any of them relating to or arising out of performing services described in this Agreement. In the event that any suit based upon such a claim, action, loss, or damages is brought against the County or Metro, and/or their officers, agents and employees, or any of them, or jointly against the Parties and their respective officers, agents, and employees, or any of them, the City shall satisfy the same.
 - 8.3. **County Indemnity.** Subject to the conditions and limitations of the OTCA and the Oregon Constitution, the County shall indemnify and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, loss, costs, expenses, and damages of any nature whatsoever, by any reason or arising out of any act or omission of the County, its officers, agents and employees, or any of them relating to or arising out of performing obligations described in this Agreement prior to the Effective Date of this Agreement. In the event that any suit based upon such a claim, action, loss, or damages is brought against the City, and its officers, agents and employees, or any of them, or jointly against the Parties and their respective officers, agents and employees, or any of them, the County shall satisfy the same.
 - 8.4. **Indemnification by Services Providers.** After the Effective Date, the City will take reasonable steps to cause its services providers receiving payments under the Agreement and that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the County and Metro and their officers, employees, and agents, from and against any and all claims and losses arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the City's services provider or any of the officers, agents, employees or subcontractors of the services provider.
9. **General Provisions.**

- 9.1. **Cooperation of Government Units.** This Agreement is an intergovernmental agreement subject to Chapter 190 of the Oregon Revised Statutes. The Agreement is not an authorization by a public body under ORS 190.010 for a Party to perform one or more inherent governmental responsibilities for another Party.
- 9.2. **Access To, Maintenance of Records.** Each Party is allowed access to the books, documents and other records of the other Party that are related to this Agreement for the purpose of examination, copying and audit, unless otherwise limited by law. The Parties will retain, maintain, and keep accessible all Records for a minimum of seven years following Agreement termination, unless a longer period of time is required under law. The Parties will maintain financial records in accordance with generally accepted accounting principles.
- 9.3. **Media Releases, Public Acknowledgment.** The Parties acknowledge the value in coordinating public communications about the Allocated Earnings, FY 2024 Funding, and SHS funding, and will make reasonable efforts to provide notice to each other prior to issuing press releases, holding press conferences, or engaging in other pre-planned public communications about the program. The Parties will use reasonable efforts to notify each other prior to releasing communications between the Parties to the public. Similarly, each Party will make reasonable efforts to publicly recognize the other and the SHS program in any publications, media presentations, or other presentations relating to or describing SHS programs and services supported by Income Taxes, including and as applicable by providing a speaking opportunity for the elected official(s) for the district in which a Party-organized event occurs.
- 9.4. **Notice.** A notice or communication under this Agreement by a Party to another Party is sufficiently delivered if sent with all applicable postage or delivery charges prepaid by: (a) personal delivery; (b) sending a confirmed email copy (either by automatic electronic confirmation or by affidavit of the sender) directed to the email address of the Party set forth below; (c) registered or certified U.S. mail, return receipt requested; or (d) delivery service or “overnight delivery” service that provides a written confirmation of delivery, each addressed to a Party as set forth in **Section 6**.
- Each Party may specify a different address for subsequent notice purposes. Notice is deemed effective on the earlier of actual delivery or refusal of a Party to accept delivery, provided that notices delivered by email are not deemed effective unless the individual to whom an email is sent confirms receipt of the email.
- 9.5. **Successors; No Assignment, Third-Party Beneficiaries.** This Agreement binds each Party, its successors, assigns and legal representatives. Except as described herein, no Party may voluntarily assign or transfer its obligations to any third-party. Nothing in this Agreement provides any benefit or right to any non-party unless such third-person is individually identified by name in this Agreement and expressly described as an “intended third-party beneficiary” of this Agreement.
- 9.6. **Adherence to Law.** The Parties will adhere to all applicable federal and state laws in all activities under this Agreement.
- 9.7. **Waivers.** No waiver made by a Party with respect to performance, or the manner or time of

performance, of any obligation of another Party or any condition under this Agreement will be considered a waiver of any other rights of the Party making the waiver or a waiver by any other Party. No waiver by a Party of any provision of this Agreement will be of any force or effect unless in writing and no waiver may be construed to be a continuing waiver.

- 9.8. **Time of The Essence.** Time is of the essence of this Agreement.
- 9.9. **Choice of Law and Forum.** This Agreement will be construed in accordance with the laws of the state of Oregon and any action brought under this Agreement will be brought in Multnomah County, Oregon, if in state court, and in the United States District Court for the District of Oregon in Portland, if brought in federal court.
- 9.10. **Modification or Amendment.** This Agreement may only be modified or amended by a writing signed by each of the Parties. For the purposes of this **Section 9.10**, the City expressly authorizes the PHB Director or their designee to execute modifications and amendments hereto that do not increase costs or allocate additional risk to the City. No modification or amendment to any provision of this Agreement may be implied from any course of performance, any acquiescence by any Party, any failure of any Party to object to another Party's performance or failure to perform, or any failure or delay by any Party to enforce its rights.
- 9.11. **Headings.** Any titles of the sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting its provisions.
- 9.12. **Counterparts; Electronic Transaction.** This Agreement may be executed in counterparts, each treated as an original, and the counterparts will constitute one document. The Parties agree that they may conduct this transaction, including any amendments or extension, by electronic means including the use of electronic signatures and facsimiles.
- 9.13. **Severability.** If any term or provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, that holding does not invalidate or render unenforceable any other provision of this Agreement.
- 9.14. **Construction and Interpretation.** To the extent consistent with the context, words in the singular include the plural, words in the masculine gender include the feminine gender and the neuter, and vice versa. All provisions of this Agreement have been negotiated at arm's length, and this Agreement may not be construed for or against any Party by reason of the authorship or alleged authorship of any provision of this Agreement.
- 9.15. **Implementation.** The Parties agree to take all actions and execute all documents necessary to affect the terms of this Agreement.
- 9.16. **No Attorney Fees.** Each Party is responsible for its own attorneys' fees and expenses to enforce any term of this Agreement in the event any arbitration, action or proceeding (including any bankruptcy proceeding) is instituted.
- 9.17. **Relationship of Parties.** Nothing in this Agreement nor any acts of the Parties under this Agreement may be deemed or construed by the Parties, or by any third person, to create the

relationship of principal and agent, or of partnership, or of joint venture or any association between the Parties.

- 9.18. **Force Majeure.** Neither Party shall be in default of the Agreement by reason of any failure or delay in the performance of its obligations where such failure or delay is caused by circumstances or causes beyond a Party's reasonable control including, but not limited to, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning or equipment, loss and destruction of property.

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BY EXECUTION OF THIS CONTRACT, EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Multnomah County

**City of Portland by and through the
Portland Housing Bureau**

By: **Do Not Execute**

By: **Do Not Execute**

Printed: Jessica Vega Pederson

Printed: Carmen Rubio

Title: Chair, Board of County Commissioners

Title: City Commissioner

Date:

Date:

Multnomah County

City of Portland

By: **Do Not Execute**

By: **Do Not Execute**

Printed: Will Glasson

Printed: Adrianne DelCotto

Title: Sr. Assistant County Attorney

Title: Senior Deputy City Attorney

Date:

Date:

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