

INTERGOVERNMENTAL AGREEMENT

Between

Portland Development Commission

And

Multnomah County

For the

Multnomah County Health Department Building on the easterly portion of Block U

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”), dated this _____ day of _____, 2012 (the “Effective Date”), is made by and between MULTNOMAH COUNTY, a political subdivision of the State of Oregon (the “County”) and the PORTLAND DEVELOPMENT COMMISSION, in its capacity as an urban renewal agency acting under ORS Chapter 457 (“PDC”). The County and PDC may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

- A. PDC, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects.
- B. The River District Urban Renewal Plan was approved by the Portland City Council, by Ordinance No. 172808 on October 21, 1998 (as amended from time to time, the “Plan”)
- C. The County owns the McCoy Building at 426 SW Stark Street which houses the County’s Health Department (“MCHD”) and is located in the River District Urban Renewal Area (the “URA”).
- D. A geotechnical report prepared on behalf of the County concludes that renovation of the McCoy Building would require substantial seismic upgrades to assure continuation of the County’s public health emergency services following an earthquake. The County decided to pursue relocation of MCHD’s headquarters, administrative offices, specialty clinics, a laboratory, and a pharmacy facility, among other potential uses (collectively, the “Project”) to a new seismic-reinforced building on the vacant, easterly portion of Block U (the “Property”) currently owned by the Portland Housing Bureau (“PHB”).
- E. Pursuant to that certain Option to Present a Design Proposal by and between PDC and Home Forward, formerly the Portland Housing Authority (“Home Forward”) dated -----

Portland Development Commission ♦ Multnomah County
Intergovernmental Agreement – County Health Department Building on Easterly Portion of
Block U, River District URA

(the “Option”), Home Forward retained the right to submit a proposal for developing the Property which is adjacent to the recently completed Bud Clark Commons developed by Home Forward, which, if accepted by PHB as successor in interest to PDC, would require PHB to convey the Property to Home Forward.

F. The County and Home Forward have entered into an Intergovernmental Agreement, effective May 24, 2012 (the “County/Home Forward IGA”) under which Home Forward will develop the Project on behalf of the County and the County will own the Project.

G. The County and PHB have, or will have, prior to the Closing entered into an Agreement for Disposition (the “DA”) under which PHB accepts the County as assignee of Home Forward’s right to acquire the Property under the Option for purposes of developing, operating and owning the Project.

H. Pursuant to ORS 457.470(10)(e), PDC is obligated to provide direct economic benefits to the County from the URA equal to 10.18% of the Plan’s amendment increasing maximum indebtedness to \$_____after June 1, 2008. The resultant \$26,948,460 is payable to the County as follows: (1) \$10,000,000 no later than June 30, 2014 (the “Initial Payment”); and (ii) the balance (\$16,948,460) on June 30, 2021 (the “Final Payment”).

I. To enable the County to commence construction of the Project during the summer of 2014, the County has requested that PDC accelerate the Final Payment to the County to be concurrent with the Initial Payment no later than June 30, 2014 (the “Closing Date”).

J. PDC, recognizing the critical need for the Project on the Property agrees, subject to the terms and conditions herein, to accelerate the Final Payment pursuant to the County’s request.

K. Concurrent with this Agreement, PDC is amending the Plan to allow for the expenditure in connection with the Project which is a public building.

L. The conveyance of the Property to the County from PHB for the purpose of completing the Project is a material inducement to PDC to enter into this Agreement; and

M. PDC finds that the fulfillment, generally, of this Agreement, and the intentions set forth herein, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of the applicable state and federal laws and requirements under which the Plan was adopted.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

ARTICLE 1 PDC GRANT GENERALLY

1.1 **PDC Grant Amount.** On the terms and conditions of this Agreement, PDC agrees to disburse the Initial Payment and the Final Payment to the County in a total aggregate amount not to exceed TWENTY SIX MILLION NINE HUNDRED FORTY-EIGHT THOUSAND FOUR HUNDRED SIXTY DOLLARS (\$26,948,460) subject to forecasted availability (the “PDC Grant”). As used in this Agreement, the PDC Grant includes any portion of funds, including the Initial Payment, that comprise the Grant Agreement. The County may use the PDC Grant funds solely for the Project and on the terms and conditions set forth herein.

1.2 **Disbursement.** PDC shall on the Closing Date, disburse the Initial Payment to the County. PDC shall disburse the Final Payment of the PDC Grant to the County on the date that the County satisfies, to PDC’s satisfaction, the conditions precedent set forth in Section 1.2.1 herein but no sooner than the Closing Date (the “Closing”). The County shall have no obligation to repay the PDC Grant except upon the occurrence of an Event of Default (as hereinafter defined).

1.2.1 **Conditions Precedent to Disbursement of Final Payment.** The disbursement of the Final Payment portion of the PDC Grant is subject to the following conditions to be satisfied by the County to PDC’s satisfaction prior to the Closing:

- (a) PDC shall have determined, in its sole discretion, that there is sufficient budget appropriation and availability of the PDC Grant;
- (b) PHB, or its designee, shall have transferred fee title to the Property to the County;
- (c) The County and PHB shall have entered into the DA;
- (d) The County and Home Forward shall have entered into the County/Home Forward IGA;

- (e) PDC has received documentation indicating that the City of Portland Bureau of Development Services is ready to issue the building permits that are required to construct the Project;
- (f) All land use approvals and permits for the Project required by Title 33 of the Code of the City of Portland shall have been secured and no appeal of any required approval or permit shall have been filed, and the time for any such appeal shall have expired. If an appeal was filed, it shall have been finally resolved;
- (g) PDC shall have amended the Plan to allow for expenditures for a public building consistent with the Project to be owned by the County;
- (h) All financing necessary to construct the Project has closed and/or the County has obtained non-contingent commitments for such financing;
- (i) No litigation is pending that prevents PDC or the County from performing their respective obligations under this Agreement; and
- (j) No Event of Default shall have occurred.

1.3 **Return of PDC Grant.** Notwithstanding anything set forth herein to the contrary, in the event that the County has not materially commenced construction of the Project by the date that is six (6) months after the Closing, the County shall return the portion of the PDC Grant representing the Final Payment that was otherwise due to the County by June 30, 2021. Because the Initial Payment is required by ORS 457.470(10)(e) to be disbursed on the Closing Date, the County shall receive and retain the Initial Payment; provided, however, that, to the extent that the County elects to use the Initial Payment for a use other than the Project, it must first notify PDC so that PDC may make any necessary further amendments, as determined by PDC in its sole discretion, to the Plan to accommodate such alternative use of the Initial Payment.

ARTICLE 2 THE COUNTY'S REPRESENTATIONS AND WARRANTIES

2.1 The County represents and warrants to PDC as follows:

2.1.1 **Authority.** The County 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 the County of this Agreement has been duly authorized by all necessary action of the County.

2.1.2 **No Violations or Default.** No event has occurred and no condition exists that constitutes an Event of Default (as hereinafter defined) by the County. Each of the following shall constitute an “Event of Default”:

- a) **Breach of Agreement.** If the County breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after the County receives written notice from PDC specifying the breach it shall be an Event of Default under this Agreement. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, it shall be an Event of Default under this Agreement if the County does not commence the cure of the breach within thirty (30) days after the County receives written notice from PDC and thereafter diligently prosecute to completion such cure within sixty (60) days unless such cure requires additional time as is reasonably necessary; or
- b) **Misuse of Funds.** It shall also be an Event of Default under this Agreement and PDC shall be irreparably harmed by such default, if the County uses any portion of the PDC Grant in a manner materially inconsistent with the purposes of this Agreement; or

2.1.3 **Limitations on Expenditure of PDC Grant Proceeds.** The County acknowledges and agrees that, to the extent that the PDC Grant includes resources derived from tax increment financing (“TIF Funds”), such TIF Funds shall only be used for “TIF eligible expenditures” by the County. “TIF eligible expenditures” means expenditures for urban renewal projects that are permitted under Article XI, Section 1c of the Oregon Constitution, ORS Chapter 457 and the Plan. Urban renewal projects generally consist of capital expenditures for tangible physical assets that are within the boundary of the URA and that are described in the Plan, and generally do not include any expenses that are not eligible to be capitalized. To the extent that TIF Funds are misspent under this Agreement, such misuse shall constitute an Event of Default hereunder and PDC shall be entitled to exercise all available legal and/or equitable remedies for such misuse.

ARTICLE 3 PDC’S REPRESENTATIONS AND WARRANTIES

3.1 PDC represents and warrants to the County as follows:

3.1.1 **Authority.** PDC 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 PDC of this Agreement has been duly authorized by all necessary action of PDC.

ARTICLE 4 THE COUNTY'S AFFIRMATIVE COVENANTS

4.1 The County covenants and agrees as follows:

4.1.1 **Records and Inspection.** The County shall keep proper books of account and records on all activities associated with the PDC Grant (collectively, the "Records"). The County shall maintain the Records in accordance with generally accepted accounting principles and shall retain the Records in accordance with the records retention laws pertaining to urban renewal projects. The County shall permit PDC and/or its duly authorized representatives, including representatives from the City of Portland, to inspect, review and make excerpts and transcripts of the Records with respect to the receipt and disbursement of funds received from PDC, provided that any such examinations and audits shall be at the reviewing party's sole expense. Access to the Records is not limited to the required retention period. The authorized representatives shall have access to the Records at any reasonable time for as long as the Records are maintained. This Section 4.1.1 shall survive any termination of this Agreement.

4.1.2 **Audits.** PDC, either directly or through a designated representative, may conduct financial and performance audits of the use of PDC Grant proceeds at any time at PDC's expense; provided, however, that to the extent that an audit reveals any malfeasance, the County shall reimburse PDC for any costs associated with the audit and the County shall correct any deviations discovered as a result of the audit. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in *Government Auditing Standards* by the Comptroller General of the United States General Accounting Office. In the event of an audit, the County agrees to provide the designated auditor with reasonable access to the County's employees and make all such financial, performance and compliance records available to the auditor. This Section 4.1.2 shall survive any termination of this Agreement.

4.1.3 **Business and Workforce Equity.** The County/Home Forward IGA shall require Home Forward, as the County's developer, to comply with PDC's Business and Workforce Equity Policy or substantially equivalent County policies.

4.1.4 **The County's Obligation to Indemnify.** To the extent permitted by law and within the limitations of the Tort Claims Act, the County shall defend, save, hold harmless, and indemnify PDC and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of the County or its officers, employees, subcontractors, or agents under this Agreement. The County shall have control of the defense and settlement of any claim that is subject to this paragraph. However, neither the County nor any attorney engaged by the County shall defend the claim in the name of PDC or

any department of PDC, nor purport to act as legal representative of PDC or any of its departments, without first receiving from PDC's General Counsel, authority to act as legal counsel for PDC, nor shall the County settle any claim on behalf of PDC without the approval of PDC's General Counsel's Office. PDC may, at its election and expense, assume its own defense and settlement.

ARTICLE 5 PDC'S AFFIRMATIVE COVENANTS

5.1 PDC covenants and agrees as follows:

5.1.1 **PDC Obligation to Indemnify.** To the extent permitted by law and within the limitations of the Tort Claims Act, PDC shall defend, save, hold harmless, and indemnify the County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of PDC or its officers, employees, subcontractors, or agents under this Agreement. However, neither PDC nor any attorney engaged by PDC shall defend the claim in the name of the County or any department of the County, nor purport to act as legal representative of the County or any of its departments, without first receiving from the Multnomah County Attorney's Office, authority to act as legal counsel for the County, nor shall PDC settle any claim on behalf of the County without the approval of the Multnomah County Attorney's Office. The County may, at its election and expense, assume its own defense and settlement.

5.1.2 PDC shall, prior to the Closing Date, amend the Plan to accommodate expenditure of the PDC Grant on the Project which is a public building.

ARTICLE 6 RIGHTS AND REMEDIES UPON EVENT OF DEFAULT

6.1 **Rights and Remedies.** Upon the occurrence of an Event of Default and at any time thereafter, PDC may, at its option, exercise any one or more of the following rights and remedies:

6.1.1 **Repayment.** PDC may declare the entire original PDC Grant (or so much thereof as has been disbursed to the County) and other charges payable by the County pursuant to this Agreement, to be immediately due and payable in full and, upon such declaration, the County shall pay to PDC the amount declared to be immediately due and payable.

6.1.2 **No Election Required.** PDC shall have any other right or remedy provided in this Agreement, or available at law, in equity, or otherwise in such order and manner as it may select.

6.1.3 **Rights and Remedies Cumulative.** All rights and remedies described in this Article 4 are cumulative and in addition to any other remedy PDC may have by agreement, at law, or in equity. Partial exercise of any right or remedy shall not limit or restrict PDC's subsequent exercise of such right or remedy nor shall it restrict PDC's contemporaneous or subsequent exercise of any other right or remedy.

6.1.4 **No Waiver.** No failure on the part of PDC to exercise, and no delay in exercising, any right, power, or privilege under this Agreement shall operate as a waiver of that right or any other right. No modification or waiver of any provision of this Agreement shall be effective unless in writing, and then only in specific instance and for the purpose given. No notice or demand on the County shall entitle the County to any other notice or demand in other similar circumstances.

6.1.5 **Payment of Costs of Collection.** In case of an Event of Default, or in case litigation is commenced to enforce or construe any term of this Agreement, the losing party will pay to the prevailing party such amounts as shall be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding.

ARTICLE 7 MISCELLANEOUS

7.1 **Counterparts.** This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by the Parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

7.2 **Survival.** All agreements, representations, and warranties shall survive the execution and delivery of this Agreement, any investigation at any time made by PDC or on its behalf and the making of the PDC Grant.

7.3 **Notice.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed effective (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile (answer back or receipt confirmed), addressed to the Parties as follows:

If to PDC:
Patrick Quinton
Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209

If to the County:
Emerald Bogue Walker
Office of the Chair
Multnomah County
501 SE Hawthorne Blvd., 6th Floor
Portland, OR 97214

7.4 **Successors and Assigns.** The County may not assign this Agreement, in whole or in part, without the prior written consent of PDC. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

7.5 **Subgrants.** The County may not subgrant any portion of the PDC Grant without the prior written consent of PDC. Notwithstanding an approved subgrant, the County shall remain fully responsible for the proper use of all PDC Grant proceeds.

7.6 **Governing Law, Jurisdiction, Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to its conflicts of law principles. Any legal action regarding this Agreement must be brought and conducted in the federal or state court, as appropriate, serving Multnomah County, Oregon, and the parties hereby consent to the jurisdiction and venue of such courts.

7.7 **Validity; Severability.** If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the Parties to the extent possible without the invalid provision.

7.8 **Exhibits.** The exhibits to this Agreement are, by this reference, incorporated into and deemed a part of this Agreement as if they were fully set forth in the text hereof.

7.9 **Time of Essence.** Time is of the essence of this Agreement.

7.10 **Relationship of the Parties.** Nothing contained in this Agreement or any acts of the Parties hereto shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture or of any other association other than that of independent contracting parties.

7.11 **No Third Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

7.12 Funding Acknowledgement / Signage. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press should acknowledge work being done is based on a partnership between the County and PDC and, if appropriate, financed with funds from the “*the River District Urban Renewal Area*”. The County shall request Home Forward to display a sign near the construction site and readily visible to the public, specifying that the Project is being “*funded in part by the Portland Development Commission’s River District Urban Renewal Area*”. The County will request that this sign remain in place until construction is complete.

7.13 Amendments. This Agreement may only be amended by a written agreement signed by both PDC and the County. The County Chair and the Executive Director of PDC and their respective designees are authorized to take all actions necessary to implement the terms of this Agreement and may authorize amendments of this Agreement without further action by the Board of County Commissioners and the PDC Board, respectively, so long as the amount of the PDC Grant is not increased.

7.14 Merger Clause. This Agreement contains the entire agreement between PDC and the County with respect to the subject matter thereof. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

MULTNOMAH COUNTY	PORTLAND DEVELOPMENT COMMISSION
By _____ Jeff Cogen, Chair	By _____ Patrick Quinton, Executive Director
APPROVED AS TO FORM: JENNY M. MORF, COUNTY ATTORNEY FOR MULTNOMAH COUNTY	APPROVED AS TO FORM: _____
By _____ Kenneth M. Elliott Assistant County Attorney	Lisa Gramp, PDC Legal Counsel