

**FIRST AMENDMENT
to
INTERGOVERNMENTAL AGREEMENT**

**Between Portland Development Commission
and
Multnomah County
For the Administration of the PropertyFit Program (formerly Multnomah County CPACE
Program)**

This first amendment (this "Amendment") to the Intergovernmental Agreement for the Administration of the PropertyFit Program (the "IGA") is authorized by ORS 190.010 and is made and entered into as of _____, 2016 (the "Effective Date") by and between Multnomah County (the "County"), a political subdivision of the State of Oregon and Portland Development Commission ("PDC"), in its capacity as an urban renewal agency under ORS Chapter 457 and Chapter 15 of the City of Portland Charter. The County and PDC may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

RECITALS

- A. The Parties entered into the IGA on September 22, 2015, authorizing PDC to act on behalf of the County as the Administrator of the Multnomah County PropertyFit Program, formerly Commercial Property Assessed Clean Energy Program ("CPACE").
- B. Certain modifications to the applicable statute, to the administration and collection process, and administrative responsibilities agreed to by the Parties have made it necessary to amend the IGA.
- C. ORS 223.685 authorizes the County to establish a property assessed program to assist owners of Qualified Real Property with the financing of seismic rehabilitation.
- D. The County authorized the creation of a seismic retrofit property assessed program authorized in ORS 223.685 in Resolution No. 2016-XXX.
- E. Both the County and PDC agree to amend the IGA to include PDC's administration of the seismic retrofit program.
- F. This is the First Amendment to the IGA.

TERMS

The Parties agree as follows:

1. All references to ORS 223.396 in the IGA are changed to ORS 223.680.¹
2. All reference to “Energy Improvements” in the IGA are changed to “Building Resiliency Improvements” as defined in Section 6 below.
3. The original Exhibit A is replaced in its entirety with Exhibit A attached hereto.
4. All reference to “CPACE” in the IGA is changed to “PropertyFit”.
5. Section 1 is replaced in its entirety as follows:

The PropertyFit Program is a new initiative which the County and PDC are implementing on a cooperative basis. The PropertyFit Program is a mechanism designed to support the financing of disaster and climate resiliency investments in Qualified Real Property. PropertyFit serves a public purpose by reducing carbon emissions, decreasing water use, and decreasing seismic life safety risks through energy conservation, renewable power, and seismic rehabilitation. PropertyFit leverages the security of the property tax system to increase access to capital for Building Resilience Improvement projects. Under the PropertyFit Program, PropertyFit financing is secured by a Benefit Assessment Lien filed against the Qualifying Real Property. PropertyFit is designed to increase building resiliency across commercial buildings in Multnomah County.

6. Section 2 is replaced in its entirety as follows:

- a) “Administrative Guidelines”: outline the terms and requirements for participation in PropertyFit.
- b) “Benefit Assessment Lien”: a lien secured by the Qualified Real Property which is senior to all other encumbrances on the property other than municipal real property taxes.
- c) “Building Resiliency Improvements”: includes all building improvements authorized under ORS 223.680 and 223.685, as same may be amended over time.
- d) “PropertyFit Financing ”: a financial instrument meant to facilitate Building Resiliency Improvements to Qualified Real Property which is secured by a Benefit Assessment Lien filed against Qualified Real Property.
- e) “PropertyFit Project”: Building Resiliency Improvements to Qualified Real Property.

¹ ORS 223.396 was renumbered to ORS 223.680 in 2015.

- f) "Qualifying Real Property": multifamily residential dwellings (of 5 or more units), or commercial or industrial buildings located in Multnomah County that can benefit from Building Resilience Improvements.

7. Section 6.d.ii is amended by adding the following new section 6.d.ii.7 as follows:

"Develop, subject to review and approval by the County, all of the form transaction documents to implement the PropertyFit program. Once the forms are approved, PDC is delegated the authority to complete, execute, and record all CPACE transaction documents, including the benefit assessment lien and any modifications to the benefit assessment lien, for individual PropertyFit transactions. Any substantive modifications to the form transaction documents shall be subject to review and approval by the County."

8. Section 6 is modified by adding a new section 6.i as follows:

"The County has allocated \$60,000 in its FY 2016-2017 budget to support the PropertyFit Social Equity Strategy which is intended to expand capacity of disadvantaged, minority and women owned contractors (DMW firms) to participate in and benefit from the PropertyFit program. The County will make full payment to PDC once this amendment has been fully executed by both parties and upon receipt of an itemized invoice. PDC agrees to implement the social equity strategy consistent with County Program #10018B dated April 15, 2016, incorporated herein by reference. PDC will provide report on number of DMW contractors trained and number and value of transactions closed by DMW contractors supported through training resources by December 31, 2017."

9. Section 8 is replaced in its entirety as follows:

"8. Enforcement and Collection of Delinquent CPACE Financing.

- "a. ORS 223.680 (7) and (8) and ORS 223.685 (6) and (7) authorize the local government implementing the programs to secure the loan with a lien on the property imposed with the same priority as an assessment. Liens may be enforced or collected in one of three ways: (1) in the same manner as a LID lien under ORS 223.505 to 223.650 (ORS 223.680(7)(c) and ORS 223.685(6)(c)); (2) by certifying the assessment to the County Assessor for collection in the same manner as local property taxes (ORS 223.680(8)(a) and ORS 223.685(7)(a)); and (3) "in any other manner that the local government determines is reasonable" (ORS 223.680(7)(d) and ORS 223.685(6)(d)). For ease of administration, PDC and the

County agree to employ a hybrid model: securing the loan financing as a benefit assessment lien, but collecting delinquent payments through the property tax system.

- "b. The benefit assessment lien will be imposed by execution of an agreement by the property owner and the recording of a notice of benefit assessment lien in the County deed records. The County delegates the authority to PDC to execute the benefit assessment lien agreement with the property owner and file the Notice of Lien in the County deed records.
- "c. The benefit assessment lien will be imposed at the time PropertyFit Financing is closed. The initial lien will be imposed based upon the estimated amount of the financing. At the PropertyFit capital provider's discretion and instruction, the lien may be modified at the completion of construction to reflect the final amount of the financing. The County delegates to PDC the authority to execute and record any PropertyFit benefit assessment lien modification. The County delegates the authority to PDC to assign the payment stream secured by the lien on behalf of the County to the PropertyFit capital provider. The County delegates the authority and responsibility to PDC to execute and record the final satisfaction of benefit assessment lien when the PropertyFit financing is paid in full.
- "d. If a property owner becomes delinquent on PropertyFit Financing, the capital provider may request that PDC certify the delinquency to the tax rolls. The request for certification may be received by PDC on or before May 1 of each year. The terms of repayment and delinquency shall be as agreed to in the PropertyFit capital provider agreement between the capital provider and PDC as Program Administrator. PDC shall review the certification submittal and ensure that criteria outlined in the capital provider agreement have been met prior to submission of a request for certification to Multnomah County. If PDC submits a complete request for certification to Multnomah County, Multnomah County will certify the delinquent amount to the assessor for collection as provided in ORS 223.680(8) or ORS 223.685(7) and ORS 310.060. PDC must submit the request for certification, Form LB-50, and any necessary accompanying documents to Multnomah County for certification to the assessor on or before June 15 of each tax year.
- "e. If PDC submits a complete request for certification to Multnomah County on or before June 15 of the tax year, the County will certify the delinquent

amount to the assessor for collection as provided in ORS 223.680(8) or ORS 223.685(7) and ORS 310.060, Once processed and approved by the Board, Multnomah County will remit payments to PDC according to the distribution schedule as payments are collected.

- "g. If a property owner pays the delinquent payment in full after PDC certifies the delinquent amount to the Assessor but prior to the certification of the Assessment Roll under ORS 311.105, the capital provider must notify PDC by September first and PDC must so notify the Assessor by September 15th in order for the Assessor to adjust the Assessment Roll to eliminate the assessment.
- "h. All payments received by PDC from the County Assessor by December 1 will be remitted by PDC to the capital provider no later than January 15 of the following year. The capital provider agreement will provide that such payment will be considered payment in full of the delinquency. The County shall remit any amounts collected after December 1 to PDC for the purposes of supporting the equity strategy within the CPACE program..
- "i. If the County forecloses on property under ORS Chapter 312 for nonpayment of taxes or assessments, the County Assessor shall provide notice of any proposed resale of the property to a private party to PDC. PDC may exercise the rights of a municipal LID assessment holder under ORS 275.130 and ORS 275.275 with regard to the distribution of the proceed of sale."
- "j. The remainder of the IGA remains unchanged and in full force and effect.
- "k. This Amendment may be executed in counterparts. Delivery of this executed Amendment by facsimile or e-mail will be sufficient to form a binding agreement.

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

MULTNOMAH COUNTY,
a political subdivision of the State of
Oregon

PORTLAND DEVELOPMENT
COMMISSION, an urban renewal
agency acting under ORS Chapter 457

By: _____
Deborah Kafoury,
Chair

By: _____
Kimberly Branam,
Executive Director

Reviewed:
JENNY M. MADKOUR, COUNTY
ATTORNEY FOR MULTNOMAH
COUNTY

Approved as to Form:

By: _____
Carlos Rasch
Assistant County Attorney

By: _____
Name: _____
PDC Attorney