

INTERGOVERNMENTAL AGREEMENT

Between Portland Development Commission

And

Multnomah County

For the Administration of the CPACE Program in Multnomah County

Contract Number

This Intergovernmental Agreement (“Agreement”) dated _____, 2015 (“Effective Date”), is made by and between Multnomah County (“County”), a political subdivision of the State of Oregon, and the Portland Development Commission (“PDC”), in its capacity as an urban renewal agency acting 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

- 1) PDC, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 and ORS 457.180 for the planning and implementation of urban renewal projects.
- 2) ORS 223.396 authorizes County to establish a program to assist owners of Qualified Real Property with the financing of cost-effective Energy Improvements.
- 3) The Multnomah County Commercial Property Assessed Clean Energy Program (“CPACE”) was established in County Resolution No. _____.
- 4) The County desires to have the CPACE program administered by PDC because the PDC has the resources and personnel to administer the CPACE program effectively and efficiently.
- 5) The PDC has the ability and desires to administer the CPACE program in support of its strategic plan goals to foster community revitalization, economic growth and job creations and to support the Portland/Multnomah Climate Action Plan goal of reducing carbon emissions through energy conservation and the use of renewable power.
- 6) The PDC and County have negotiated this Agreement pursuant to the authority granted by ORS Chapter 190.

- 7) Multnomah County and the City of Portland have set a goal of reducing greenhouse gases by 40% by the year 2030 and 80% by the year 2050, over 1990 levels. Achieving these targets, both locally and globally, is critical in order to avoid the worst impacts of climate change. To achieve the 2030 goal the energy use of existing buildings must be reduced by 25%, and 50% of all energy used in buildings must come from renewable resources with 10% coming from onsite renewable sources.

AGREEMENT

The Parties agree as follows:

1) DESCRIPTION OF CPACE PROGRAM

The CPACE Program is a new initiative which the County and PDC are implementing on a cooperative basis. The CPACE Program is a mechanism designed to support the financing of energy efficiency and renewable energy investments in Qualified Real Property. CPACE serves a public purpose by reducing carbon emissions through energy conservation and the use of renewable power and leverages the security of the property tax system to increase access to capital for Energy Improvement projects. Under the CPACE Program, CPACE Loans are secured by a Benefit Assessment Lien filed against Qualifying Real Property. CPACE is designed to increase energy efficiency and renewable energy adoption across commercial buildings in Multnomah County.

2) DEFINITIONS

- a) “Administrative Guidelines”: attached as Exhibit A, outline the terms and requirements for participation in CPACE.
- 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) “CPACE Program”: the Multnomah County Commercial Property Assessed Clean Energy Program.
- d) “CPACE Loan”: a financial instrument meant to facilitate clean Energy Improvements to Qualified Real Property which is secured by a Benefit Assessment Lien filed against Qualified Real Property.
- e) “CPACE Project”: Energy Improvements to Qualified Real Property.

- f) “Energy Improvements”: energy efficiency and renewable energy improvements to Qualifying Real Property authorized under the CPACE Program.
- g) “Qualifying Real Property”: multifamily residential dwellings (of 5 or more units), or commercial or industrial buildings located in Multnomah County that can benefit from Energy Improvements.

3) **TERM.** The term of this Agreement shall begin on the Effective Date and end on the fifth anniversary of the Effective Date, unless otherwise terminated early in accordance with the terms of this Agreement. This Agreement may be renewed upon approval by the governing bodies of both Parties.

4) **TERMINATION.**

- a) Subject to the limitations in Section 7, this Agreement may be terminated by either Party upon 90 day’s written notice.
- b) Prior to termination as provided in Section 4(a), the Parties shall take steps necessary to ensure minimal interference with pending and fully funded CPACE Loans and execute all documents necessary to ensure that termination of this Agreement does not cause disruption of the CPACE Program.
- c) Upon notice of intent to terminate under Section 4(a) PDC will cease issuing new administrative approvals and will prepare the files and records of all pending and closed CPACE Loans for transfer to Multnomah County or it’s designee. Records will include all information reviewed by the Program Administrator during the origination of the CPACE Loan and payment histories, outstanding balances, and collection records, maintained by PDC in its role as Program Administrator.
- d) PDC will be compensated for its role as administrator on all projects approved before notice of termination at the rate of 0.50 percent of the CPACE Loan amount. Payment of this administrative fee will be made upon closing of the transaction with the new administrator. The County will ensure that its contract with the new administrator include provisions for this payment. Nothing in the paragraph is intended to limit PDC involvement in the CPACE Program in its role as a CPACE approved lender.
- e) Sections 8, 9, 12, 13 and 14 of this Agreement shall survive termination of this Agreement.

5) PILOT PROGRAM

- a) The program will initially be tested in Urban Renewal Areas located within the City of Portland using tax increment funding administered by PDC, with the goal of expanding the program County-wide. The Pilot Program description is attached as Exhibit B. The Pilot includes the following key elements:
 - i) Funding a limited number of transactions to test the market and refine program design;
 - ii) Complete program design elements including:
 - (1) Long-term capitalization strategy
 - (2) Marketing and outreach strategy
 - (3) Equity strategy, including minority contractor and workforce development components
 - (4) Development of the internal systems at the County and PDC for the long-term implementation of the program, including:
 - (a) Process mapping
 - (b) Development of standardized forms and documents
 - (c) Reporting systems
 - (d) Program evaluation metrics
- b) The County and PDC agree to allocate adequate staff resources to the Pilot Program to carry out the activities outlined in the attached Exhibit B.
- c) The County and PDC will, as part of the Pilot Program, develop Performance Standards that will be used to evaluate PDC's ongoing performance as Program Administrator.

6) ADMINISTRATION OF CPACE PROGRAM

- a) For decisions regarding the administration of the CPACE Program or amendments to the Administrative Guidelines that require the consent of both Parties:
 - i) The Executive Director of PDC is designated as the decision maker for PDC.
 - ii) The County Chair designates the Director of Sustainability as the decision maker for the County.
- b) The County and PDC shall allocate adequate staff resources to effectively and efficiently administer the CPACE Program.

c) Development of Administrative Guidelines

- i) PDC and County have developed guidelines for the administration of the CPACE Program (“Administrative Guidelines”). The Administrative Guidelines are attached to this Agreement as Exhibit A.
- ii) Amendment of Administrative Guidelines must be made in writing and agreed to by the persons identified in Section 6(a).
- iii) For purposes of federal copyright law, the PDC and County are joint owners of the Administrative Guidelines in Exhibit A and as subsequently amended.

d) Appointment and Delegation of Program Administration

- i) PDC shall serve as the CPACE Program’s administrator (“Program Administrator.”)
- ii) The County delegates to PDC the authority to perform the following functions of a Program Administrator, as specifically set forth in ORS 223.396:
 - (1) Evaluate and approve CPACE Projects for participation in the CPACE Program per program requirements outlined in the Administrative Guidelines.
 - (2) Determine the need for an energy audit of the Qualifying Real Property making application to the CPACE Program.
 - (3) Evaluate CPACE Projects to determine whether it can be reasonably expected to achieve any savings-to-investment ratio, loan-to-value, or other criteria requirement that may be outlined in the Administrative Guidelines.
 - (4) Impose requirements and conditions on CPACE Loans that are designed to ensure timely repayment.
 - (5) Ensure that the CPACE Loan is in a principal amount sufficient to pay for the costs of the CPACE Loan approved Energy Improvements, the costs of the energy audit (if any) and the costs and reserves of the CPACE Program.
 - (6) Ensure that a CPACE Loan is not entered into unless written notice is given to all mortgagees of the Qualifying Real Property and written consent is given by mortgagees stating that a CPACE Loan does not constitute an event of default or give rise to any remedies under the terms of the mortgage loan agreements.
- e) As Program Administrator, PDC shall also verify that the Qualified Real Property does not have delinquent property taxes owing. A CPACE Loan shall not be secured by Qualified Real Property with delinquent property tax obligations.

- f) The County delegates to PDC the authority to develop a capitalization strategy for the CPACE Program which includes, but is not limited to, direct funding of CPACE Loans by private lenders.
- g) Subject to the limitations included in Section 7, this delegation does not preclude the County from exercising the authority granted to it by ORS 223.396 independently from PDC.
- h) Following completion of the Pilot Program, PDC will be responsible for meeting the Performance Standards jointly established by PDC and the County.

7) EXCLUSIVITY AND COST RECOVERY

- a) The Parties agree PDC shall be the exclusive Program Administrator of the CPACE Program. If the County determines that there are markets that would be better served by another administrator, the County and PDC will negotiate for the removal of those markets from PDC's duties as Program Administrator.
- b) If this Agreement is terminated by the County without cause prior to the five year anniversary of the Effective Date, the County and PDC will negotiate for PDC's recoupment of reasonable external costs incurred in the creation of the CPACE Program's legal, marketing and outreach infrastructure. External costs are recoupable up to the date of termination, but PDC cannot recoup costs previously recovered through administrative fees collected by PDC in its role as Program Administrator. This Section 7(b) shall not apply if the Agreement is terminated due to PDC's failure to cure a material breach of this Agreement.

8) ENFORCEMENT AND COLLECTION OF DELINQUENT CPACE LOANS

- a) Upon written request by PDC, the County agrees to take the steps necessary to file the Benefit Assessment Lien against the Qualified Real Property to perfect the security for the CPACE Loan.
- b) The County delegates to PDC, as Program Administrator, the authority to take independent action to enforce collection of CPACE Loans, including, but not limited to, the initiation and completion of collection actions authorized by Oregon statute.
- c) ORS 223.396 authorizes two interrelated methods of enforcing repayment of the CPACE Loan in the event of default by the owner of the Qualifying Real Property.

- i) The first is to foreclose on the benefit assessment lien placed on the Qualifying Real Property as authorized in ORS 223.505 to 223.595 (“LID Process”). The LID process will be the default method requested by PDC as Program Administrator.
- ii) The second is certification of the amounts owed for entry upon the County tax roll in compliance with ORS 310.060 (“Certification Process”).
- d) In the event of default on the CPACE Loan by the owner of the Qualified Real Property and, upon written notice from the Program Administrator, the County and PDC will consult on use of the Certification Process in lieu of the default LID Process to facilitate collection or foreclosure.
- e) The Parties agree to execute additional documents with the funder of the CPACE Loan and with the owner of the Qualifying Real Property if necessary to facilitate use of the LID Process and the Certification Process.
- f) The PDC and County agree to take the steps necessary to transfer funds collected pursuant to the LID Process or Certification Process to the lender in order to satisfy the CPACE Loan delinquency.

9) RECORDS

- a) PDC shall keep proper books of account and records on all activities associated with PDC’s role as Program Administrator of the CPACE Program (“Records”). PDC shall maintain the Records in accordance with generally accepted accounting principles and shall retain the Records in accordance with the applicable retention policy/ies.
- b) Each Party and its authorized representative(s) shall have access to the Records of the other which are related to this Agreement for the purpose of examination, copying and audit, unless otherwise limited by law. Any examination and copying of Records shall be at the reviewing Party’s sole expense.
- c) Access to Records is not limited to the required retention period(s). A Party and its authorized representative(s) shall have access to the Records at any reasonable time for as long as the Records are maintained. This Section 9 shall survive termination of this Agreement.

10) REPORTING

- a) The Parties agree to meet on at least a quarterly basis to review the Program Administrator's performance under the terms of this Agreement.
- b) During the Pilot, PDC and the County shall develop a standardized report system that will summarize annual program activities. Once developed, that report will be prepared by PDC and provided to the County on an annual basis.
- c) Upon the one-year anniversary of this Agreement, PDC and County will complete a joint report detailing CPACE Pilot Program outcomes, including mutually agreed upon equity metrics. For subsequent years PDC shall produce periodic reports on program outcomes as requested by the governing bodies of PDC and County.

11) ADMINISTRATIVE COST RECOVERY. As Administrator, PDC is authorized to establish a fee structure to recover the cost of development and on-going program administration from CPACE Loans.

12) AUDITS

- a) The County, either directly or through a designated representative (s), may conduct CPACE program financial and performance audits on PDC's administration of the CPACE Program.
- b) The County will provide PDC with 30 days notice of its intent to conduct an audit to enable PDC to assemble the necessary materials and schedule adequate staff resources to support the audit process.
- c) Audits shall be at the County's sole expense. PDC shall correct any deviations discovered as a result of the audit.
- d) In the event of an audit, PDC agrees to provide the designated auditor with reasonable access to PDC employees and make all such CPACE Program financial, performance and compliance records available to the auditor. This Section 12 shall survive termination of this Agreement.

13) REPRESENTATIONS AND WARRANTIES

- a) County 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.

- b) PDC 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 the PDC of this Agreement has been duly authorized by all necessary action of the PDC.

14) INDEMNIFICATION

- a) 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 PDC 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.
- b) Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300 PDC shall indemnify, defend and hold harmless County from and against all liability, loss and costs arising out of or resulting from the acts of PDC, its officers, employees and agents in the performance of this Agreement.

15) RIGHTS AND REMEDIES UPON EVENT OF DEFAULT

- a) Termination Upon Breach. If either Party (a) commits a material breach or material default in the performance or observance of any of its obligations under this Agreement, and (b) such breach or default continues for a period of 30 days after delivery by the other Party of written notice reasonably detailing such breach or default, then (c) the non-breaching or non-defaulting Party shall have the right to terminate this Agreement, with immediate effect, by giving written notice to the breaching or defaulting Party.
- b) Rights and Remedies Cumulative. All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any other agreement between the parties or otherwise.
- c) Waiver. A Party's failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

- d) **Payments of Expenses.** All costs and expenses incurred in connection with the negotiation, preparation and enforcement of this Agreement, including, without limitation, all fees and expenses of attorneys will be borne solely by the respective Party who incurred them, and the other Party will have no liability in respect to such costs and expenses.

16) ORDER OF PRECEDENCE. In the event of any inconsistent or incompatible provisions, the Oregon Revised Statutes shall take precedence, followed by the provisions of this Agreement, and then by the Administrative Guidelines.

17) ADHERENCE TO LAW. Each Party shall comply with all federal, state and local laws and ordinances applicable to this Agreement.

18) NON-DISCRIMINATION. Each Party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.

19) 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 shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

20) SUCCESSORS. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

21) SUBCONTRACTS AND ASSIGNMENT. Neither Party will subcontract or assign any part of this Agreement without the written consent of the other Party.

22) 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.

23) 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 electronic mail (receipt confirmed), addressed to the Parties as follows:

If to PDC:

Shelly Haack
Business Opportunity Officer
Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209
haacks@pdc.us
503-360-4555

If to the County:

John Wasiutynski
Director, Office of Sustainability
Multnomah County
501SE Hawthorne, Suite 600
Portland, OR 97214
john.wasiutynski@multco.us
503- 988-3193

24) 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 consent to the jurisdiction and venue of such courts.

25) VALIDITY; SEVERABILITY. If any provision of this Agreement is held to be invalid, such even shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder shall construed without the invalid provision so as to carry out the intent of the Parties to the extent possible without the invalid provisions.

26) EXHIBITS. The Exhibit to this Agreement are, by this reference, incorporated into and deemed a part of this Agreement as if it was fully set forth in the text of this Agreement.

27) NO THIRD PARTY BENEFICIARIES. 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.

28) AMENDMENTS TO IGA. This Agreement may only be amended by a written agreement signed by both the PDC and the County. The County Chair and the Executive Director of the 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 of Commissioners.

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: _____
Patrick Quinton,
Executive Director

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

Approved as to Form:

By: _____
Lindsay Kandra
Assistant County Attorney

By: _____
Name: _____
PDC Attorney