

ATTACHMENT A

**INTERGOVERNMENTAL
AGREEMENT**

This Intergovernmental Agreement (this “**Agreement**”), authorized pursuant to ORS 190.110, is by and between Multnomah County (“**MC**”), a political subdivision of the State of Oregon, and Home Forward (“**HF**”), formerly the Housing Authority of Portland, a municipal corporation. MC and HF may be collectively referred to herein as the “**Parties**” and individually as a “**Party**”.

RECITALS:

A. The Parties desire to work together to pursue development of a new building to house Multnomah County Health Department (“**MCHD**”) administration and clinical services functions (the “**Project**”) on the vacant, easterly one-half of BLOCK U, adjacent to the newly opened Bud Clark Commons, located on NW 6th Avenue between NW Hoyt and NW Irving Streets, in Northwest Portland, Multnomah County, Oregon, the legal description of which is: The easterly one hundred plus or minus feet (100± ft.) of Block “U” Couch’s Addition to the City of Portland, located in the Northwest quarter of Section 34, Township 1 North, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon (the “**Site**”). The Site is currently owned and controlled by the City of Portland’s Housing Bureau (“**PHB**”);

B. HF has extensive experience developing large and complex projects, such as the recently completed Bud Clark Commons; and

C. MC is tasked with assuring, promoting and protecting the health of the people of Multnomah County – often providing services to the most vulnerable in Multnomah County, and;

D. HF has an option on the Site which provides HF the exclusive opportunity to present a proposal for development of the Site that compliments Bud Clark Commons and which further provides that if the proposal is accepted the Site will be transferred to HF at no cost (“**Option Agreement**”); and

E. MC is in need of a new building to replace MCHD’s headquarters and has requested the assistance of HF to pursue the development of this new building on the Site; and

F. In response, HF funded the preparation of a Feasibility Study which detailed the requirements of MCHD’s building, developed a conceptual analysis of MCHD’s requirements for its new headquarters, and established the Project’s suitability for the Site; and

G. MC identified a large portion of the necessary financing for a replacement building; and

H. HF recognizes the value of the new MCHD headquarters to the community and more particularly to the residents of Bud Clark Commons; and

I. HF and MC have committed to work together to pursue development of the Project on the Site to be owned by MC; and

J. HF and MC have prepared and submitted a proposal to PHB, a copy of which is attached hereto as Exhibit A (the “**Proposal**”), seeking approval and disposition of the Site for the Project; and

K. PHB has indicated a willingness to transfer the Site to MC at or before closing on the financing for the Project conditioned on a determination by PHB that the Project is feasible and will be developed for the stated purposes; and

L. The Proposal identifies financing alternatives and three different development options for the Project; and

M. The Parties have elected to proceed with Option III (“**Option III**”), subject to MC securing sufficient financing and HF securing all required governmental approvals for the Project; and

N. The Proposal includes a preliminary financial structure and budget for Option III; and

O. The Parties have agreed that there are particular goals to be pursued as part of the development of the Site that are described in attached Exhibit B (the “**Goals and Objectives**”); and

P. Both Parties have entered into this Agreement in order to establish the Parties’ respective development and financial roles in the Project.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained in this Agreement, including the foregoing recitals, the Parties hereby agree as follows:

AGREEMENTS:

I. DEFINED TERMS.

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Agreement. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form, and vice-versa. Defined terms may be used in the singular or the plural.

II. REPRESENTATIVES OF THE PARTIES

A. HF's Project Manager (the "**HF Project Manager**") shall be Michael Andrews, or such other person(s) as designated in writing by the HF Executive Director. The HF Project Manager shall be responsible for the performance of all HF obligations under this Agreement including, without limitation, inter-bureau and internal coordination of project, finance and legal staff. In addition, the HF Project Manager is authorized to approve work and billings hereunder, to give notices and to carry out other HF actions referred to herein.

B. MC's Project Manager (the "**MC Project Manager**") shall be Brett Taute, or such other person(s) as designated in writing by the Chair or Department Director. The MC Project Manager shall be responsible for managing all MC obligations under this Agreement including without limitation inter-bureau and internal coordination of project, finance and legal staff. In addition, the MC Project Manager is authorized to approve work and billings hereunder, to give notices and to carry out other MC actions referred to herein.

III. SHARED OBLIGATIONS

Under the terms of this Agreement, the Parties intend that the relationship created by this Agreement is that of independent contracting parties. Neither Party hereto shall be deemed an agent, partner, joint venturer, or related entity of the other by reason of this Agreement. However, MC and HF assume certain shared obligations as follows:

A. The Parties agree that MC will accept responsibility for certain funding obligations, as defined in and subject to MC's satisfaction of the pre-conditions set forth in Section IV (A) ("**Funding Obligations**").

B. The Parties agree to accept responsibility for performing certain activities as specified in this Agreement, generally referenced herein as "**Performance Obligations**". The Party responsible for discharging a Performance Obligation under this Agreement will be deemed the performing party ("**Performing Party**") to all such obligations described in this Agreement. Except as otherwise provided, the Performing Party will hold all of the explicit and implicit rights, obligations and remedies that pertain to the performance of each designated task and as such, will act as the authorized representative for Project purposes (subject to the other Party's approval rights where indicated) with respect to any consultants or contractors hired to complete any Performance Obligations.

C. The Parties shall collaborate in preparing any written material (e.g., news releases, brochures, newsletters, reports) intended for public distribution relating to obligations under this Agreement.

D. The Parties shall collaborate to achieve the Goals and Objectives for the Project (Exhibit B).

E. HF acknowledges and agrees that, as required by Multnomah County, Oregon Administrative Procedure FAC-1, dated April 2008, concerning approval of Major Facilities Capital Projects ("**FAC-1**"), the Project must be presented to the Board of County Commissioners (the "**MC Board**") at four critical stages of the Project development and obtain the MC Board's approval, following public hearings. The four (4) key planning milestones are

described as: (1) Preliminary Planning Proposal; (2) Project Proposal; (3) Project Plan; and (4) Project Design & Construction.

F. The Parties hereby approve the list of milestones for the Project attached as Exhibit C, which shall include estimated timing of the three remaining public hearings and the MC Board's approvals under FAC-1. The Parties acknowledge that the Project milestones are subject to revisions and replacement by a detailed Project schedule and that the MC Board is also required to approve substantial changes (\pm 20% in any line item or any increase in the total Project budget) in the Project scope and budget in accordance with FAC-1.

G. **DDA.** HF will attempt to negotiate a Disposition and Development Agreement with PHB (the "**DDA**"), which shall be subject to MC's review and approval. The Parties acknowledge that the Option Agreement provides that the Site will be transferred to HF at no cost. However, PHB has indicated that PHB may require some consideration for the transfer. MC shall attempt to negotiate any agreement with PHB as to consideration.

H. MC will cooperate with HF on public outreach, as necessary, to establish a community participation process and keep various community organizations and stakeholder groups informed throughout the Project.

IV. MC PERFORMANCE AND FUNDING OBLIGATIONS

A. MC shall be responsible for securing all financing for the Project, conditioned on (a) MC's approval of the condition of the Site, real property title, and terms of the Site acquisition, in MC's sole discretion, (b) MC obtaining the necessary financing and funds to complete the Project, as described in Subsections 1 through 5 hereof, or alternate financing mechanisms approved by MC, on terms and conditions acceptable to MC in MC's sole discretion, and (c) receipt of all governmental approvals, licenses, easements, permits, and agreements required to develop the Project on the Site, on terms and conditions acceptable to MC in MC's sole discretion. The Parties anticipate that MC will finance the Project through one or more of the following sources:

1. **Tax Increment Financing (TIF).** MC shall obtain funding in the amount of \$26,948,460 in Tax Increment Financing (TIF) from the City of Portland's River District Urban Renewal Area for the Project pursuant to an agreement between the Portland Development Commission ("**PDC**") and MC, as authorized by 2009 OR Laws Ch. 700 (10), amending ORS 457.470. MC shall be responsible for negotiation of the agreement with PDC.

2. **MC Internal Funding.** MC shall attempt to provide internal funding for remaining Project costs (which includes FF&E as defined in Section IV.A.6). Potential sources for such funding may include, but are not limited to, one time only, full faith and credit borrowing and disposition of the McCoy Building.

3. **Interim Financing.** MC shall be responsible for providing interim financing that would be needed for construction of the Project to commence in advance of the availability of TIF.

4. **FF&E, Relocation, Telecom, Security, Medical Equipment and County Initiatives.** MC has identified additional project related costs that include furniture fixtures or equipment, relocation, telecom, security, medical equipment and MC initiatives (“**FF&E**”), the cost of which was included in the revised Proposal from MC to the MC Board and the City of Portland (“**City**”).

B. MC will finance the Performance Obligations of HF by reimbursing HF for payments made to architects, engineers, consultants, a construction manager/general contractor (the “**Contractor**”) and subcontractors and through the payment to HF of a development fee as hereinafter provided. HF shall receive a development fee of four percent (4%) of Project hard and soft costs, including architecture, engineering, environmental, permits, construction and FF&E, for its services in connection with the Project (the “**Development Fee**”), up to a maximum Development Fee of One Million Seven Hundred Thousand Dollars (\$1,700,000). The Development Fee shall be payable on any increases in Project costs requested or generated by MC but not on cost overruns resulting from HF’s, the Contractor’s, consultants’ or subcontractors’ errors, delays or non-performance. The Development Fee shall be paid as follows: 25% upon City issuance of building permits; 25% upon 50% Project completion, 25% upon Project substantial completion and City issuance of temporary C of O, 15% upon City issuance of final C of O, and 10% upon completion of 1-year maintenance and warranty period from final C of O.

C. Payments to HF, except for the Development Fee, shall be made on a monthly basis after approval by the MC Project Manager of pay applications submitted by HF. A preliminary Project budget for Option III is included in the Proposal and attached hereto as Exhibit “D.”

D. MC will cooperate with HF in executing all necessary applications for governmental permits, approvals, licenses, and other documents necessary to be filed with all governmental authorities having jurisdiction of the Site in order to permit its development for the Project.

E. In response to HF’s written requests, MC will promptly furnish HF with information, guidelines and schedules and give specific answers to questions upon which information is desired from time to time relating to the Project, as HF may reasonably require to perform its obligations under this Agreement.

F. MC will cooperate with HF to finalize a Project schedule, meet all Project milestones and provide timely response for all review processes, including the MC Board and staff.

V. HF PERFORMANCE OBLIGATIONS

1. HF will undertake activities with its own staff and work in conjunction with MC to select qualified architects, engineers, consultants, general contractors and subcontractors to identify the physical, financial and regulatory constraints pertinent to the Project.

B. HF will prepare one or more Requests for Proposal (subject to MC's approval) to procure qualified architectural and engineering professionals for work in connection with the Project in accordance with procurement requirements of HF, and the Project Goals and Objectives listed in Exhibit B. A representative from each of MC's Facilities and Health Departments will participate on the selection panel. The selection shall be subject to MC's approval.

C. HF will prepare a Request for Proposal (subject to MC's approval) to procure a qualified Contractor and will also solicit and contract with other subcontractors (in accordance with procurement requirements of HF, and the Project Goals and Objectives listed in Exhibit B) including a geotechnical engineer, surveyor, and environmental consultant in order to perform the work of this Agreement. A representative from each of MC's Facilities and Health Departments will participate on the selection panel. The selection shall be subject to MC's approval.

D. The Contractor for the Project shall be selected by HF, with MC's prior review and approval of the RFP, and participation by a representative from each of MC's Facilities and Health Departments on the Contractor selection panel. At MC's request, the RFP for the Contractor shall state that the Contractor may be required to enter into a labor agreement for the Project in conjunction with the Contractor's contract, requiring fair opportunity to be extended both to signatory firms and non-signatory firms, and including protections and exclusions for Minority-Owned, Women-Owned & Emerging Small Businesses certified in the State of Oregon ("MWESBs") and their employees. The Contractor, the Contractor's contract and the form of that contract shall be approved by HF and MC. HF will convene weekly Project meetings of various stakeholders including, but not limited to, MC, Multnomah County Health Department staff, the Contractor, Project architect and Project engineer to consider the work of consultants and achievement of the Project Goals and Objectives. The HF Project Manager shall promptly deliver upon receipt to the MC Project Manager timely copies of all work products, including drawings, specifications, designs, draft and final copies of technical and consultant analyses and reports, and key correspondence prepared or received during the course of the Project.

E. In addition to the weekly Project meetings, HF will convene meetings of HF, MC and MCHD and Facilities staff to ensure that all Parties approve design, program, systems, budget and schedule at the following points in the design and construction process. This information will be prepared and presented by HF to the MC Board in accordance with MC's FAC-1 process:

1. Project Proposal -100% Schematic Design
2. Project Plan - 100% Design Development;
3. Project Design and Construction - 100% Construction Documents;

Following each of these established presentations, MC and HF will agree to either move forward with the Project as discussed, move forward with revisions, or not move forward with the Project.

F. HF shall consult with MC to identify MCHD's programming needs and MC Facilities' engineering, design and systems needs within the Project. This will be achieved through a series of facilitated meetings with MCHD and MC Facilities representatives.

G. HF will submit project development documents to MC for review and approval in accordance with the Approval Process outlined in Exhibit F.

H. HF will cause its consultants to produce multiple schematic options for the development of the Site that test various design and building concepts. Schematic planning will include massing studies, zoning analyses and program space assignments.

I. HF will provide MC at each approval milestone as identified in Section V.F. above and Exhibit F with an overview of design, program, budget and schedule.

J. HF will provide a final report to MC recommending a Development Plan that includes, but is not limited to, the following information:

- a site plan which shows the location of structures, ground floor entries and exits, parking and loading/delivery areas, driveways, sidewalks, and open spaces
- a program description and floor plan which show the proposed uses, the location of those uses, and the quantities of those uses expressed in approximate square footages
- a proposed building envelope study which shows the approximate scale and massing of the proposed building(s)
- an identification of systems in the proposed building(s)
- a work plan that addresses Project Goals and Objectives
- a Project budget, broken out by soft and hard costs, as identified in Exhibit D
- a development pro forma showing anticipated sources and uses of funds
- a Project schedule for design, entitlement, financing and construction
- an appropriately formatted draft contract, consistent with Section V.D. and Exhibit B
- one or more architecture and engineering agreements, consistent with Section V.B. and Exhibit B

K. HF shall supervise and coordinate the work of the architects, engineers and other consultants in designing the Project and buildings and other improvements to be constructed on the Site, and preparing construction documents, including preliminary development plans needed to obtain site plan, land use and design review approvals and detailed plans and specifications for the Project, each of which shall be subject to MC's prior review and approval. HF shall

endeavor to cause the architects, engineers and other consultants to comply with the MC project goals and objectives and design standards described in attached Exhibit B (the “**Project Goals and Objectives**”) and Exhibit E (the “**MC Design Standards**”). To the extent that the Proposal does not address the potential costs or schedule impact arising from compliance with the MC Design Standards, HF, in consultation with the Project’s architect, engineer and cost estimator, shall provide MC with a detailed estimate of the costs. HF shall also provide MC with a Project schedule that identifies the impact for approval in accordance with the process for approval of change orders described in attached Exhibit F (“**Approval Process**”).

L. HF will cause to be prepared a monthly, all-inclusive construction budget, and such additional or supplemental schedules as may be necessary. The construction budget shall include all direct construction costs, including (but not limited to) the cost of all labor and materials for constructing the Project, and all indirect construction costs, including (but not limited to) all architect’s, engineer’s, consultant’s and attorneys’ fees directly attributable to the development of the Project, construction period operating expenses, insurance and bonding expenses, and all loan fees and interest on all construction loans (if any) to be used to finance the construction of the Project, as outlined in attached Exhibit D (the “**Project Budget**”).

M. HF shall assist MC to ensure compliance with FAC-1 and Multnomah County Administrative Procedure FAC-4, dated January 2010 and MC Design Standards set forth in Exhibit E. HF will prepare and make all necessary applications for governmental permits and approvals necessary to authorize construction of the Project. HF will make best efforts to provide permit packages to MC for review and approval prior to submission. HF shall promptly notify MC when HF has obtained required governmental permits and approvals, as to the Project, when received.

N. HF will provide general oversight of the actions, responsibilities and recommendations of the consultants and the Contractor during the period prior to commencement of construction of the Project and during the construction of the Project.

O. HF shall review all pay applications, invoices or bills received for services and work incurred in connection with the planning, development and construction of the Project, and cause such pay applications, invoices or bills as are good and proper and in conformance to the Project Budget to be forwarded to MC for approval and payment on a monthly basis.

P. HF shall submit proposed changes in the approved Project Budget for MC’s review and approval in accordance with the Approval Process.

Q. The parties acknowledge that any increase to the total Project Budget must be submitted to the MC Board for approval.

R. Prior to the beginning of each fiscal year of MC, HF will provide a cash flow projection for the Project for the ensuing fiscal year. Prior to the end of each quarter during such fiscal year, HF shall provide an update to such cash flow projection.

VI. EFFECTIVE AND TERMINATION DATES

This Agreement shall be effective from the date that both Parties have executed this Agreement (the “**Effective Date**”) through the final disbursement of MC’s Funding Obligations, unless earlier terminated in accordance with the terms herein (the “**Termination Date**”). The Parties may agree to extend the Termination Date, in writing, by mutual agreement.

VII. COMPLIANCE WITH LAWS

In performing the activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws and regulations including, but not limited to, the Oregon Constitution, the Oregon Tort Claims Act, and the appropriations and budget limitation laws of each Party.

VIII. INDEMNIFICATION/INSURANCE

A. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300 as applicable to a “local public body” as defined therein, MC shall indemnify, defend and hold harmless HF, its officers, directors, agents and employees from and against any and all liability, damages, expenses, attorneys fees, causes of action, suits, claims or judgments, arising out of or connected with the environmental or geotechnical condition of the Site at the time of MC’s acquisition of the Site or MC’s work or any employee, agent, consultant, contractor or subcontractor performing MC’s work under this Agreement. To the extent permitted by law, HF shall indemnify, defend and hold harmless MC, its officers, directors, agents and employees from and against any and all liability, damages, expenses, attorneys fees, causes of action, suits, claims or judgments, arising out of or connected with HF’s work or any employee, agent, consultant, the Contractor or subcontractor performing HF’s work under this Agreement.

B. MC, its officers, directors, agents and employees shall not be liable for any damage to equipment or any other property of HF or its employees, agents, consultants, contractors or subcontractors or injury to any person in or upon the Site or Project, including but not limited to damage by fire, explosion, electricity, flooding, vandalism, water or rain, or any other cause whatsoever, except to the extent caused by or due to the negligence of MC, its officers, directors, agents and employees.

C. HF agrees to indemnify, defend and hold harmless MC, its officers, directors, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, the handling, storage, discharge, transportation or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials or contaminants, as those terms are defined by federal, state or local law or regulation, as amended from time to time after MC’s acquisition of the Site and during construction of the Project by HF or its employees, agents, consultants, the Contractor or subcontractor performing HF’s work under this Agreement. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency.

D. HF, HF's architects and engineers, the Contractor, and all first-tier subcontractors shall provide proof of insurance, in compliance with the Insurance Requirements set forth in Exhibit G (or such other Insurance Requirements as may be mutually agreed to by HF and MC), prior to beginning any work on the Site. Insurance for HF, HF's architects and engineers, the Contractor and all first tier subcontractors may be provided pursuant to an owner controlled insurance program (OCIP) or a contractor controlled insurance program (CCIP), commonly known as "wraps" or "wrap policies," whereby MC, HF, HF's architects and engineers, the Contractor, and all first tier subcontractors become named insureds under a single policy covering The Project. Any OCIP or CCIP shall be subject to the prior mutual written approval of HF and MC which shall not be unreasonably withheld.

E. The parties' indemnity and insurance obligation shall survive Project completion and the Termination Date.

IX. OWNERSHIP OF WORK PRODUCT

Unless otherwise agreed to in writing by the Parties, MC will own any and all data, documents, plans, designs, drawings, technical data reports, specifications, and other materials produced in connection with this Agreement (the "**Work Product**"), except for HF's internal ledgers, working papers and other job records. Ownership also includes all rights, title and interest, including but not limited to, copyrights of specified work products. HF shall be entitled to produce and retain copies of the Work Product as reasonably necessary to perform the HF Performance Obligations. HF shall make any or all of HF's internal ledgers, working papers and other job records available to MC and its representatives, at HF's offices and during normal business hours, as MC may reasonably request from time to time, to enable MC to perform examinations and audits and make excerpts and transcripts, provided that any such examinations and audits shall be at MC's sole expense.

X. DELIVERY / MAINTENANCE OF RECORDS

HF shall maintain Project funding records on a current basis to support its need for MC's Funding Obligations. MC or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any HF records regarding its work hereunder, for a period of three (3) years after completion of the Project or termination of this Agreement.

XI. FUNDING ACKNOWLEDGEMENT / SIGNAGE

Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on this Agreement between MC and HF.

XII. CONFLICT RESOLUTION

If a dispute arises regarding performance, cost, schedule, scope, quality or other terms and conditions of this Agreement, the Parties agree to exercise good faith in expeditiously resolving said conflict in the following manner.

A. All conflicts should first be discussed and resolved if at all possible by the Project Managers.

B. If the conflict cannot be resolved by the Project Managers, then such conflict shall be elevated to the MC Board Chair and the HF Executive Director for discussion and resolution.

XIII. MISCELLANEOUS PROVISIONS

A. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both Parties.

B. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

C. **Choice of Venue.** Oregon law, without reference to its conflict of laws provisions, shall govern this Agreement and all rights, obligations and disputes arising out of the Agreement. Venue for all disputes and litigation shall be in Multnomah County, Oregon.

D. **Severability/Survival.** If any of the provisions contained in this Agreement are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this Agreement for any cause.

E. **No Third Party Beneficiary.** HF and MC are the only parties to this Agreement and as such, are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

F. **Merger Clause.** This Agreement constitutes the entire agreement between the Parties. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

[Signatures appear on the following page]

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

MC: **MULTNOMAH COUNTY**, a political subdivision
of the State of Oregon

By: _____

Name: Jeff Cogen

Its: Chair, Board of County Commissioners

Date: _____, 20____

APPROVED AS TO FORM:
JENNY M. MORF, COUNTY ATTORNEY

Assistant County Attorney

HF: **HOME FORWARD**,
Formerly The Housing Authority of Portland

By: _____

Name: Steven D. Rudman

Its: Executive Director