

INTERGOVERNMENTAL AGREEMENT

Agent Agreement No. 90G000279

This Agent Agreement (“Agreement”) is between the State of Oregon acting by and through its Department of Consumer and Business Services, Building Codes Division (DCBS) and Multnomah County (“Local Government”), which is the agent of DCBS for the purposes of this agreement, each a “Party” and, together, the “Parties”.

SECTION 1: AUTHORITY

1.1 This Agreement is authorized by ORS 190.110 and 446.646(3).

1.2 PURPOSE

DCBS has authority under ORS 446.646 to carry out the “duties, functions and powers” of the Manufactured Structure Ownership Records program (“program”) regulated in ORS 446.561 to 446.646. ORS 446.646 provides that a Local Government carrying out functions under ORS 446.566 to ORS 446.646 related to a manufactured home ownership documents and trip permits is an “agent” of DCBS with regard to those functions. Accordingly, DCBS may authorize Local Government to administer portions of the program on behalf of DCBS, including, but not limited to, processing ownership documents, recording security interests and issuing trip permits for manufactured structures. Under this Agreement, Local Government shall function as a vendor processing applications for DCBS and through the DCBS owned and operated system, for a flat fee per processing transaction. Local Government agents for DCBS under this Agreement do not have discretionary powers. Further, Local Government shall not be authorized to administer any portions of the program unless it has entered and maintained participation in this Agreement.

1.3 STATEMENT OF WORK. DCBS shall provide a software system, “Manufactured Home Ownership Document System” (MHODS), with a front end Web site and a backend database that interfaces to a document management system. The front end Web site will be for customers, including but not limited to manufactured structure dealers, lenders, and title companies, to search for information, submit applications, upload documents and pay fees. The back end database will be for participating counties to use for issuing ownership documents and trip permits and for recording interests in manufactured structures. The document management system shall retain information, according to the established document retention schedule, about ownership and security interests in manufactured structures. Local Government, on behalf of DCBS, shall accept and process all MHODS applications from all applicants in Local Government’s county who come directly to Local Government with complete applications from within Local Government’s county and may, at its discretion, accept and process complete MHODS applications from applicants outside the Local Government’s boundaries. Applications from applicants outside the Local Government’s boundaries are accepted and processed under ORS 446.568, 446.571(1)(a), (b)(A) or (C), or 446.636(1), (3) or (4). Local Government agrees to use the MHODS to enter all ownership document transactions and trip permit fields necessary to complete these transactions. Local Government also agrees to scan all associated documents into the MHODS system for the

purposes of creating a record of the transaction. Local Government shall have access to run reports and search for information in the MHODS database.

- 1.4** ORS 446.571 provides that a manufactured structure owner may file an application directly with DCBS “if a Local Government assessor refuses to accept an application in appropriate form as required.” If Local Government finds that an application is incomplete, it can request that the customer provide the missing application materials or supporting documentation required by DCBS in rule. However, under this Agreement, Local Government will process all complete applications that come directly to Local Government and follow administrative rules for administering this program on behalf of DCBS. If Local Government refuses to process an application for a manufactured structure located in its county that is complete under DCBS administrative rules, DCBS will process the application refused by Local Government, but DCBS will consider Local Government’s refusal as a breach of this Agreement and may remove Local Government access to MHODS, as referred to in Section 9.2.4 of this Agreement.

SECTION 2: EFFECTIVE DATE AND DURATION

- 2.1** This Agreement becomes effective on the date at which every party has signed this Agreement and remains effective until June 30, 2020, unless otherwise terminated in accordance with Section 9.

SECTION 3: RESPONSIBILITIES OF EACH PARTY

- 3.1** DCBS shall provide, maintain and upgrade the MHODS software system and document archiving interface. DCBS shall provide a Help Desk to assist manufactured structure dealers, title companies, and escrow companies to navigate the MHODS Web site, and to assist Local Government with MHODS software issues. Local Government shall not be considered to be in breach of this Agreement if it is unable to process an application because of a failure or malfunction of the MHODS software system. DCBS will accept and process public records requests related to MHODS and information created or stored by MHODS.
- 3.2** Local Government shall use MHODS to complete all aspects of transactions for recording manufactured structure ownership and security interests, as well as issuing trip permits.

SECTION 4: FEES AND COMPENSATION

- 4.1** The fees collected for MHODS transaction shall be deposited with the state weekly through one of the following methods: into a state bank account with deposit slips provided by the state; into a state account by credit card through the DCBS secure fax line; into a state account through ACH transfer; or, into a state account by LGIP transfer from Local Government’s account to DCBS’s account, provided that Local Government complies with the Local Government Public Funds Information Requirements detailed in the Local Government section of the Oregon State Treasury website at oregon.gov/treasury. The state shall remit \$35 of each \$55 ownership document application fee, and all of each trip permit application fee, collected by Local Government on behalf of DCBS to Local Government on a monthly basis. Payment for the previous month will be remitted to Local Government by the end of the following month.

- 4.2** Local Government shall accept application fees only for complete applications that result in the issuance of ownership documents. DCBS shall not issue any refunds of MHODS fees to Local Government or to customers for application fees accepted by Local Government. Local Government shall retain all Local Government fees generated outside of this Agreement.

SECTION 5: REPRESENTATIONS AND WARRANTIES

Local Government represents and warrants to DCBS that:

- 5.1** Local Government is a county duly organized and validly existing. Local Government has the power and authority to enter into and perform this Agreement; the making and performance by Local Government of this Agreement (a) have been duly authorized by Local Government, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Local Government's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Local Government is party or by which Local Government may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Local Government of this Agreement, other than those that have already been obtained. This Agreement has been duly executed and delivered by Local Government and constitutes a legal, valid and binding obligation of Local Government enforceable in accordance with its terms;
- 5.2** Local Government has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Local Government will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession;
- 5.3** Local Government shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement; and
- 5.4** The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Local Government.

DCBS represents and warrants to Local Government that:

- 5.5** DCBS has the power and authority to enter into and perform this Agreement; the making and performance by DCBS of this Agreement (a) have been duly authorized by DCBS, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which DCBS is party or by which DCBS may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by DCBS of this Agreement, other than those that have already

been obtained. This Agreement has been duly executed and delivered by DCBS and constitutes a legal, valid and binding obligation of DCBS enforceable in accordance with its terms.

- 5.6 DCBS has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and DCBS will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession;
- 5.7 DCBS shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement; and,
- 5.8 The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by DCBS.

SECTION 6: GOVERNING LAW, CONSENT TO JURISDICTION

- 6.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively “Claim”) between DCBS or any other agency or department of the State of Oregon, or both, and Local Government that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a Circuit Court of proper jurisdiction for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. The Parties acknowledge that this is a binding and enforceable Agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 7: CONTRIBUTION AND INDEMNIFICATION

- 7.1 Pursuant to ORS 446.621(4) DCBS is not liable to any person for issuing an ownership document based upon proof provided under ORS 446.621(3), and such immunity shall be construed to extend to any agent of DCBS.
- 7.2 If any third party makes any tort 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 (the “Notified Party”) with respect to which the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with

counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 7 with respect to the Third Party Claim.

- 7.3** With respect to a Third Party Claim for which DCBS is jointly liable with Local Government (or would be if joined in the Third Party Claim), DCBS shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Local Government in such proportion as is appropriate to reflect the relative fault of DCBS on the one hand and of Local Government on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of DCBS on the one hand and of Local Government on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. DCBS's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 7.4** With respect to a Third Party Claim for which Local Government is jointly liable with DCBS (or would be if joined in the Third Party Claim), Local Government shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by DCBS in such proportion as is appropriate to reflect the relative fault of Local Government on the one hand and of DCBS on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Local Government on the one hand and of DCBS on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Local Government's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
- 7.5** All Other Claims. For any other claim, suit, class action suit, or proceeding alleging discriminatory or unconstitutional conduct with respect to Local Government's acts or refusal to act under this agreement in Local Government's dealings with persons seeking services under this Agreement,, Local Government shall, subject to Article XI, Section 10 of the Oregon Constitution, indemnify and defend the State or Oregon, DCBS, and their officers and employees from and against all claims, suits, actions, losses, damages, liability, costs and expenses of any nature whatsoever arising out of or relating to the acts or omissions of Local Government or its officers, employees, subcontractors or agents under this Agreement.

For any other claim, suit, class action suit, or proceeding alleging discriminatory or unconstitutional conduct with respect to DCBS's acts or refusal to act under this Agreement in DCBS's dealings with persons seeking services under this Agreement related to the territory within the boundaries of Local Government, DCBS shall indemnify and defend Local Government, and its officers and employees from and against all claims, suits, actions, losses, damages, liability, costs and expenses of any nature whatsoever arising out of or relating to

the acts or omissions of DCBS Government or its officers, employees, subcontractors or agents under this Agreement, up to a maximum of \$500,000.

SECTION 8: DEFAULT

8.1 Local Government will be in default under this Agreement upon the occurrence of any of the following events:

Local Government fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement; any representation, warranty or statement made by Local Government in this Agreement or in any documents or reports relied upon by DCBS to measure the delivery of services, the expenditure of funds or the performance by Local Government is untrue in any material respect when made; Local Government (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or proceeding or case is commenced, without the application or consent of Local Government, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Local Government, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Local Government or of all or any substantial part of its assets, or (c) similar relief in respect to Local Government under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Local Government is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

8.2 DCBS will be in default under this Agreement if DCBS fails to perform, or discharge any of its agreements or obligations under this Agreement, or any representation, warranty or statement made by DCBS in this Agreement or in any documents or reports relied upon by Local Government to measure the delivery of services, the expenditure of funds or the performance by DCBS is untrue in any material respect when made.

SECTION 9: TERMINATION

9.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

9.2 DCBS may terminate this Agreement as follows:

9.2.1 Upon 30 days advance written notice to Local Government;

9.2.2 Immediately upon written notice to Local Government, if DCBS fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in DCBS's reasonable administrative discretion, to perform its obligations under this Agreement;

9.2.3 Immediately upon written notice to Local Government, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that DCBS's performance under this Agreement is prohibited or DCBS is prohibited from paying for such performance from the planned funding source;

9.2.4 Immediately upon written notice to Local Government, if Local Government is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Local Government;

9.2.5 Immediately upon written notice to Local Government, if Local Government refuses to accept an application for a manufactured structure located within Local Government's borders in appropriate form; or

9.2.6 As otherwise expressly provided in this Agreement.

9.3 Local Government may terminate this Agreement as follows:

9.3.1 Upon 30 days advance written notice to DCBS;

9.3.2 Immediately upon written notice to DCBS, if Local Government fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Local Government's reasonable administrative discretion, to perform its obligations under this Agreement;

9.3.3 Immediately upon written notice to DCBS, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Local Government's performance under this Agreement is prohibited or Local Government is prohibited from paying for such performance from the planned funding source;

9.3.4 Immediately upon written notice to DCBS, if DCBS is in default under this Agreement and such default remains uncured 15 days after written notice thereof to DCBS; or

9.3.5 As otherwise expressly provided in this Agreement.

9.4 Upon termination of this Agreement, Local Government will immediately cease all activities under this Agreement, unless DCBS expressly directs otherwise in such notice. Upon termination, Local Government will deliver to DCBS all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon DCBS's reasonable request, Local Government will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by Local Government under this Agreement. Upon receiving a notice of termination of this agreement the DCBS shall remove all Local Government access to MHODS immediately.

SECTION 10: NONAPPROPRIATION

DCBS's obligation to pay any amounts and otherwise perform its duties under this Agreement, except for remittance of the amounts described in Section 4 of this agreement, is conditioned upon DCBS receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow DCBS, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of DCBS.

SECTION 11: SUBCONTRACTS

Local Government shall not subcontract any of Local Government's obligations or services under this Agreement without DCBS's written authorization. The basis for refusing authorization includes, but is not limited to, DCBS's determination that Local Government's request to subcontract would or could constitute a violation of a Collective Bargaining Agreement to which DCBS is a party.

SECTION 12: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties that is signed by a duly authorized representative of each party, clearly recites the parties' understanding and intent to amend the Agreement, and clearly and with specificity describes the terms to be amended or supplemented.

SECTION 13: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, personal delivery, or postage prepaid mail, to a Party's authorized representative at the physical address, fax number set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 13. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 14: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 15: SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 16: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 17: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 18: INTENDED BENEFICIARIES

DCBS and Local Government are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 19: FORCE MAJEURE

Neither Party is responsible for any failure to perform, or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Either party may terminate this Agreement upon written notice to the other party after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 20: ASSIGNMENT AND SUCCESSIONS IN INTEREST

Local Government may not assign or transfer its interest in this Agreement without the prior written consent of DCBS and any attempt by Local Government to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. DCBS's consent to Local Government's assignment or transfer of its interest in this Agreement will not relieve Local Government of any of its duties or obligations under this Agreement. The provisions of this

Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 21: TIME IS OF THE ESSENCE

Time is of the essence in each Party's performance of its obligations under this Agreement.

SECTION 22: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 23: RECORDS MAINTENANCE AND ACCESS

Each Party shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, each Party shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of the Party, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document the Party's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of each Party, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Each Party acknowledges and agrees that the other Party and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Each Party shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, each Party shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

SECTION 24: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 25: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

Multnomah County

Date

(Print Name, Title above)

STATE OF OREGON acting by and through its Department of Consumer and Business Services, Building Codes Division.

Chris Huntington, Deputy Administrator Date

Nancy A. Cody, Designated Procurement Officer Date

Reviewed and Approved

Katharine M. Lozano, Sr. Assistant Attorney General Date