

AGREEMENT FOR FUNDING FOR CONSTRUCTION OF A CRISIS ASSESSMENT AND TREATMENT CENTER

THIS AGREEMENT for Funding For Construction of a Crisis Assessment and Treatment Center ("CATC") (the "Agreement") is made and dated as of June 17, 2010, by and between Multnomah County, Oregon (the "County"), and Central City Concern, Inc., an Oregon corporation ("Contractor").

RECITALS

A. Contractor is a non-profit corporation and the owner of the David B. Hooper Building (Hooper) at 20 NE Martin Luther King Boulevard in the City of Portland. The County donated Hooper to Contractor at no cost to Contractor in 2005.

B. The City of Portland (City), the County and Contractor have agreed on a project to construct a CATC at Hooper ("Project") as follows:

- Relocation of the alcohol and drug detoxification program previously operated by Contractor at Hooper to another location to make room for the CATC (this part of the Project has been completed, funded in part by a previous agreement);
- Lease of space on the first and second floors of Hooper (CATC Space) by the County from Contractor for the CATC which space will be subleased by the County to the operator of the CATC;
- Design and construction of the CATC improvements and purchase of all necessary furniture, fixtures and equipment (FF&E) by Contractor subject to County approval of plans and specifications for the improvements and the FF&E;
- Selection of an operator for the CATC by the County using a request for proposal process;
- Operation of the CATC by the operator selected by the County funded by Medicaid, state funding, insurance proceeds and contributions from the City and the County.

C. The construction of the Project will be funded by this grant which includes a \$2,000,000 grant to the County for this purpose from the Portland Development Commission (PDC) \$844,000 of County funds included in this grant, New Market Tax Credits and State of Oregon grant funds which will be available to help fund construction of the Project.

D. The total project cost, including FF&E and contingencies is \$5,259,000.

E. The Contractor and the County desire to set forth herein the mutually agreed upon terms and conditions of the County's provision of funds for the Project.

NOW, THEREFORE, in consideration of the previous Recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Funding Amount and Terms

a. **Funding**. On the terms and upon fulfillment of the condition set forth herein, the County agrees that it shall provide Two Million Eight Hundred Forty Four Thousand Dollars (\$2,844,000) of Funding ("the Funding") to Contractor to construct a CATC.

b. **Use of Funding**. Contractor will use the Funding only for the purposes specified herein and for no other purpose.

c. **Calculation of Interest**. The Parties agree that the Contractor is not required to make principal or interest payments on the outstanding amount of the Funding unless an Event of Default occurs. If an Event of Default occurs, the interest on the outstanding amount of the Funding from the date of the Event of Default up to but not including the date of payment or cure of the Event of Default shall be equal to 4% per annum.

2. Condition Precedent to Provision of Funding

As the condition precedent to the obligation of the County to provide Contractor with the Funding, the Contractor shall have delivered to the County:

- A duly executed original of this Agreement,
- Proof satisfactory to the County in its sole discretion that Contractor has an irrevocable commitment of New Market Tax Credit funding for the Project in the sum of not less than \$ 1,415,000,
- Proof satisfactory to the County in its sole discretion that Contractor has an irrevocable commitment for a State of Oregon grant for the Project in the sum of not less than \$\$1,000,000,

- Execution of a lease of the CATC Space with the County acceptable to the County.

3. Representations and Warranties of the Contractor

As an inducement to the County to enter into this Agreement, the Contractor represents and warrants to the County that:

a. **Corporate Existence; Compliance with Law.** The Contractor (i) is duly organized, validly existing, and in good standing as a corporation under the laws of Oregon and is qualified to do business in each jurisdiction where its ownership of property or conduct of business requires such qualification and where failure to qualify would have a Material Adverse effect on the Contractor or its property and/or business or on the ability of the Contractor to pay or perform the Obligations; (ii) has the corporate power and authority and the legal right to own and operate its property and to conduct business in the manner in which it does and proposes so to do; and (iii) is in compliance with all Requirements of Law.

b. **Corporate Power; Authorization; Enforceable Obligations.** The Contractor has the corporate power and authority and the legal right to execute, deliver, and perform this Agreement to which it is a party and has taken all necessary corporate action to authorize the execution, delivery, and performance of this Agreement. This Agreement has been duly executed and delivered on behalf of the Contractor and constitute legal, valid, and binding obligations of the Contractor enforceable against the Contractor in accordance with their respective terms, subject to the effect of applicable bankruptcy and other similar laws affecting the rights of creditors generally and the effect of equitable principles whether applied in an action at law or a suit in equity.

c. **No Material Litigation.** Except as previously disclosed to County, no litigation, investigation, or proceeding (including, without limitation, claims regarding hazardous materials) of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Contractor, threatened by or against the Contractor or any of its Subsidiaries or Affiliates (if any) or against any of such parties' properties or revenues that is likely to be adversely determined and that, if adversely determined, is likely to have a Material Adverse effect on the business, operations, property, or financial or other condition of the Contractor or any of its Subsidiaries (if any).

d. **Taxes.** The Contractor and each of its Subsidiaries (if any) have filed or caused to be filed all tax returns that are required to be filed and have paid all taxes shown to be due and payable on said returns or on any assessments made against them or any of their property other than taxes that are being contested in good faith by

appropriate proceedings and as to which the Contractor or applicable Subsidiary has established adequate reserves in conformity with GAAP.

e. **Consents, etc.** No consent, approval, authorization of, registration, or declaration of filing with any governmental authority is required on the part of the Contractor in connection with the execution and delivery of this Agreement or the performance of or compliance with the terms, provisions, and condition hereof or thereof.

4. Contractor Obligations

The Contractor hereby covenants and agrees with the County that Contractor shall:

a. **Maintenance of Existence and Properties; Compliance.** Maintain its corporate existence and maintain all rights, privileges, licenses, certifications, approvals, franchises, properties, and assets necessary or desirable in the normal conduct of its business, and comply with all Requirements of Law.

b. **Inspection of Property; Books and Records; Discussions.** Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities, and permit representatives of the County (at no cost or expense to the Contractor unless there shall have occurred and be continuing an Event of Default) to visit and inspect any of its properties and examine and make abstracts from and copies of any of its books and records at any reasonable time and as often as may reasonably be desired by the County, and to discuss the business, operations, properties, and financial and other condition of the Contractor and any of its Subsidiaries (if any) with officers and employees of such parties, and with their independent certified public accountants.

c. **Notices.** Promptly give written notice to the County of:

i. The occurrence of any Potential Default or Event of Default;

ii. Any litigation or proceeding affecting the Contractor or any of its Subsidiaries or Affiliates (if any) that could have a Material Adverse effect on the business, operations, property, or financial or other condition of the Contractor or any of its Subsidiaries or Affiliates (if any); and

iii. A Material Adverse change in the business, operations, property or financial or other condition of the Contractor or any of its Subsidiaries or Affiliates (if any).

d. **Agreement.** Comply with and observe all terms and conditions of this Agreement.

e. **Insurance.** Obtain and maintain insurance in such amounts and against such risks as are usually carried by corporations engaged in similar businesses similarly situated, and furnish the County on request from time to time by County full information as to all such insurance (including copies of all policies and endorsements thereto).

f. **Cooperation.** Cooperate in good faith with Multnomah County to plan for the delivery of critical mental health, addiction, and related services in Multnomah County, including at the CATC.

g. **Construction of Project.** Contract for and Construct the Project in accordance with plans and specifications approved by the County. The Project shall be certified as LEED-CI (commercial interior) Gold. Construction shall begin no later than August 1, 2010 and shall be completed so that commencement of the use of CATC space may begin not later than April 1, 2011. The completed, furnished facility shall meet all licensing requirements for a 16 bed secure residential treatment facility.

h. **County Approval For Changes to the Project.** Obtain County approval prior to making any changes to County approved plans and specifications. plans for build out and purchase of furnishings prior to initiation of work at the Hooper site. Advise the County immediately of any circumstances that arise that could result in an increased cost to the project in excess of 5%.

i. **Purchase of FF&E.** Purchase and install FF&E approved by the County.

j. **Provide Monthly Reports and Access to the CATC Space.** Provide to the County monthly progress reports commencing on the first day of the month after construction begins describing the progress of the construction, construction draws and other information as may be requested by the County; provide reasonable access to the County to monitor the progress of the construction.

k. **Responsibility for Cost Overruns/Reimbursement of Savings.** Be responsible for all costs in excess of the \$5,259,000; re-pay the difference to the County if the If the actual project cost is less than \$5,259,000.

l. **Lease of CATC Space.** Lease the CATC Space to the County for sublease to the operator of the CATC on terms acceptable to the County.

5. Events of Default

Upon the occurrence of any of the following events (an "Event of Default"):

a. Contractor shall fail to perform any obligation or do any thing that Contractor is required to perform or do under this Agreement;

b. Any representation or warranty made by the Contractor in connection with this Agreement shall be inaccurate or incomplete in any material respect on or as of the date made;

c. The Contractor shall fail to maintain its corporate existence or shall default in the observance or performance of any covenant or agreement contained in previous paragraphs;

d. (i) The Contractor or any of its Subsidiaries or Affiliates (if any), shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its assets, or the Contractor or any of its Subsidiaries or Affiliates (if any) shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Contractor or any of its Subsidiaries or Affiliates (if any), any case, proceeding or other action of a nature referred to previously in clause (i) that (A) results in the entry of an order for relief or any such adjudication or appointment, or (B) remains undismissed, undischarged, or unbonded for a period of sixty (60) days; (iii) there shall be commenced against the Contractor or any of its Affiliates or Subsidiaries (if any), any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint, or similar process against all or substantially all of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed, satisfied, or bonded pending appeal within sixty (60) days from the entry thereof; (iv) the Contractor or any of its Subsidiaries or Affiliates (if any), shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in (other than in connection with a final settlement), any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Contractor or any of its Subsidiaries or Affiliates (if any), shall generally not, or shall be unable to, or shall admit in writing its inability to pay its debts as they become due;

e. Contractor shall voluntarily suspend the transaction of business for more than one day in any calendar year, other than force majeure events, regularly scheduled shutdowns consistent with past experience and industry norms;

f. The Contractor shall default under any of its service contracts with County or the State of Oregon;

THEN, automatically upon the occurrence of an Event of Default under paragraph 5(c) above, and thirty (30) days after the Contractor's receipt of notice of the occurrence of any other Event of Default and the Contractor's failure to cure the occurrence during the thirty (30)-day period, the Obligations (including, but not limited to, all outstanding Funding, accrued interest, fees and charges) shall become immediately due and payable in full, without demand upon or presentment to the Contractor, which are expressly waived by the Contractor, and the County may immediately exercise one or more of the rights, powers, and remedies available to it under this Agreement, at law, in equity or otherwise, including the right to seek a receiver under applicable state law.

6. Miscellaneous Provisions

a. **No Assignment.** The Contractor may not assign its rights or obligations under this Agreement without the prior written consent of the County, which consent shall not be unreasonably withheld. Subject to the foregoing, all provisions contained in this Agreement or any document or agreement referred to herein or relating hereto shall inure to the benefit of the County, its successors and assigns, and shall be binding upon the Contractor, its successors and assigns.

b. **Amendment; No Waiver.** This Agreement may not be amended or the terms or provisions hereof waived unless such amendment or waiver is in writing and signed by the County and the Contractor. It is expressly agreed and understood that the failure by the County to elect to accelerate amounts outstanding hereunder shall not constitute an amendment or waiver of any term or provision of this Agreement. No delay or failure by the County to exercise any right, power, or remedy shall constitute a waiver thereof by the County, and no single or partial exercise by the County of any right, power, or remedy shall preclude other or further exercise thereof or any exercise of any other rights, powers, or remedies.

c. **Cumulative Rights.** The rights, powers, and remedies of the County hereunder are cumulative and in addition to all rights, powers, and remedies provided under any and all agreements between the Contractor and the County relating hereto, at law, in equity or otherwise.

d. **Entire Agreement.** This Agreement and agreements referred to herein embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof and thereof.

e. **Survival.** All representations, warranties, covenants, and agreements herein contained on the part of the Contractor shall survive the termination of this

Agreement and shall be effective until the Obligations are paid and performed in full or longer as expressly provided herein.

f. **Notices.** All notices, consents, requests, and demands to or upon the respective parties hereto shall be in writing, and shall be deemed to have been given or made when delivered in person to those Persons listed on the signature pages hereof or one day after delivery to a national overnight courier service, or in the case of telex or telecopy notice, when sent, verification received, in each case addressed as set forth on the signature pages hereof, or such other address as either party may designate by notice to the other in accordance with the terms of this paragraph 6(f).

g. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Oregon, without giving effect to choice of law rules.

h. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together shall constitute one agreement.

i. **Accounting Terms.** All accounting terms not otherwise defined herein are used with the meanings given such terms under GAAP.

j. **Waiver of Jury Trial/Venue.** THE CONTRACTOR AND THE COUNTY HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY, WHETHER ARISING UNDER THE OREGON CONSTITUTION, ANY RULES OF THE OREGON CODE OF CIVIL PROCEDURE, COMMON LAW OR OTHERWISE, TO DEMAND A TRIAL BY JURY IN ANY ACTION, PROCEEDING, MATTER, CLAIM OR CAUSE OF ACTION WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR ANY OTHER AGREEMENT, DOCUMENT OR TRANSACTION CONTEMPLATED HEREBY WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE COUNTY AND THE CONTRACTOR EACH AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL IN THE FEDERAL OR STATE COURTS IN MULTNOMAH COUNTY, OREGON, WITHOUT A JURY. THE CONTRACTOR AND THE COUNTY HEREBY CONSENT TO SUCH VENUE AND WAIVE ANY CLAIM THAT SUCH VENUE IS INCONVENIENT. WITHOUT LIMITING THE FOREGOING, THE CONTRACTOR AND THE COUNTY FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF ANY OF THIS AGREEMENT OR ANY PROVISION THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

7. Definitions

For purposes of this Agreement, the terms set forth below shall have the following meanings:

"Affiliate" shall mean, as to any corporation, limited liability company or partnership, any other corporation directly or indirectly controlling, controlled by or under direct or indirect common control with, such corporation. "Control" as used herein means the power to direct the management and policies of such corporation.

"Agreement" shall mean this Agreement, as the same may be amended, extended or replaced from time to time.

"Event of Default" shall have the meaning given such term herein.

"Funding" is immediately available funds delivered to Contractor.

"GAAP" shall mean generally accepted accounting principles in the United States in effect from time to time.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof, or any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government.

"Material Adverse" shall mean with respect to a "change" or an "event," any event(s), changes(s) or happening(s) which could, individually or in the aggregate, result in the change in the business, operations, properties, assets, management, ownership, organization, existence, power, authority or condition (financial or otherwise) of the Contractor which is, or could, when aggregated with other change(s), event(s) or happening(s) be, material and adverse to the prospect of payment of the Obligations when due.

"Obligations" shall mean any and all outstanding amounts of Funding and any other debts, obligations, and liabilities of the Contractor to the County that arise pursuant to this Agreement.

"Person" shall mean any corporation, limited liability company, natural person, firm, joint venture, partnership, trust, unincorporated organization, government, or any department or agency of any government.

"Potential Default" shall mean an event that but for the lapse of time or the giving of notice, or both, would constitute an Event of Default.

"Requirements of Law" shall mean as to any Person the Articles of Incorporation and Bylaws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation, or a final and binding determination of an arbitrator or a determination of a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Subsidiary" shall mean any corporation, limited liability company or partnership more than fifty percent (50%) of the voting stock or ownership interests thereof shall, at the time as of which any determination is being made, be owned, either directly by the Contractor or through Subsidiaries (if any).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

This Agreement is executed as of the date stated at the top of the first page.

COUNTY:

MULTNOMAH COUNTY, OREGON

CONTRACTOR:

CENTRAL CITY CONCERN, INC.,
an Oregon corporation

By: _____
Typed Name: _____
Title: _____

By: _____
Typed Name: _____
Title: _____

Address where notices are to be sent:

Address where notices are to be sent:

Attn.: _____
Telephone: _____
Facsimile: _____

232 NW 6th Ave, Portland, Oregon 97209
Attn.: Traci Manning
Telephone: (503) 294-1681
Facsimile: (503) 294-4321