

**INTERGOVERNMENTAL AGREEMENT
NEIGHBORHOOD PROSPERITY INITIATIVE
FOR GRANTED REVENUES**

This Intergovernmental Agreement (this “Agreement”) commencing on [DATE] (the “Effective Date”) is made and entered into by and between MULTNOMAH COUNTY, OREGON, acting by and through its elected officials (the “County”), and the CITY OF PORTLAND, acting by and through the Portland Development Commission, its duly designated urban renewal agency (“PDC”). PDC and the County may be collectively referred to herein as the “Parties” and, individually, as a “Party”.

RECITALS

- A. The Neighborhood Economic Development Strategy (the “NED Strategy”) is a citywide initiative to foster economic opportunity and neighborhood vitality throughout Portland neighborhoods.
- B. On Oct 18, 2011, Mayor Adams and Multnomah County Chair Cogen jointly announced the Neighborhood Prosperity Initiative (the “NPI”), one of the NED Strategy’s key elements that will result in the creation of up to six small, innovative urban renewal areas, focused on neighborhood commercial areas.
- C. The goal of the NPI is to strengthen neighborhood business districts’ economic competitiveness through community-planned and community-implemented actions and projects.
- D. The following six communities plan to become NPI districts: NE 42nd Avenue, Cully Boulevard, Parkrose Rosewood, SE Division Street (117th - 148th Avenues), and SE Division Street and 82nd Avenue (each, a “NPI District”).
- E. Each NPI District will focus on: increasing the visibility of the business district, growing more jobs, strengthening existing businesses and filling vacant spaces.
- F. Upon approval of an urban renewal plan and conformance with all provisions of in accordance with ORS Chapter 457, each NPI District will become a small urban renewal area (“URA”) managed by a local community-based non-profit organization (each, a “District Manager”).
- G. The tax revenues generated on the incremental assessed value from each URA will provide tax increment revenues (“TIR”) for a portion of each NPI District’s funding for capital improvements.
- H. PDC and the County acknowledge and agree that in order to be fully successful, each NPI District will require additional funding revenues beyond the TIR available to each NPI District.
- I. ORS 457.470(4) provides that taxing jurisdictions overlapping a URA formed on or after January 1, 2010 receive a portion of the revenues generated on the incremental

assessed value of the URA when the URA reaches certain revenue thresholds (the “Shared Revenues”). and

- J. Accordingly, the County agrees to grant PDC an annual amount equal to its share of the Shared Revenues realized as a result of the sharing provisions set forth in ORS Chapter 457 on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Article I. Grant of Shared Revenues

Section 1.01 County Grant. Subject to the terms and conditions of this Agreement, the County shall provide PDC with an annual grant equal to the amount of its annual share of Shared Revenues due to the County as a taxing jurisdiction for each NPI District (“Granted Revenues”) for the Term (as hereinafter defined) of each NPI District.

Section 1.02 Disbursement of the Granted Revenues. The Granted Revenues shall be disbursed to PDC on May 1 of each fiscal year. The amount of Granted Revenues for a NPI District in any fiscal year shall be calculated in accordance with the following formula:

Granted Revenues = (IV Not to Use) X (MCPR) X (Compression Rate) X (Collection Rate),

where:

- “IV Not to Use” means the amount shown under the heading “Excess Assessed Value Amount Not Used” as set forth in Table 4c of Multnomah County’s Summary of Assessment and Levies report for a NPI District for such fiscal year;
- “MCPR” means the operating tax rate certified by Multnomah County for a fiscal year that is equal to or less than its permanent operating tax rate limit;
- “Compression Rate” means one minus the quotient of the County’s Compression Loss attributed to its permanent rate (line 27, expressed as a positive number) divided by the Total Extended for the NPI District (line 24), both as shown on Table 4a for Multnomah County in its most recently filed Summary of Assessment and Levies report; and
- “Collection Rate” means the lesser of (i) 0.939 or (ii) the Percentage Collected (expressed as a decimal) as shown in the most recently filed Summary of Property Tax Collections for the most recent fiscal year.

Section 1.03 Obligation to Fund. The Parties acknowledge and agree that in order to be fully successful each NPI District, in addition to the TIR, will require a reliable and consistent funding source. To that end, the County hereby commits the Granted Revenues annually for the Term (as hereinafter defined) of each NPI District. Likewise, the City of Portland (the “City”) has agreed to provide PDC with an annual grant equal to the amount of its annual share of tax revenues for each NPI District realized as a result of ORS 457.470(4) (the “City’s Granted Revenues”) for the Term of each NPI District. In the event that the City fails to grant PDC any of the City’s Granted Revenues, such amount otherwise due as part of the City’s Granted Revenues shall be included in calculating the duration of the Term for each NPI District. Such failure on the part of the City shall not relieve the County from its obligation to fund its share of the Granted Revenues to PDC.

Section 1.04 Term. The County shall provide the Granted Revenues to PDC for each NPI District annually on May 1 of the fiscal year in which those revenues are received until the “Termination Date”, which is the earlier of: (i) the date that PDC has received the Total Funding (as hereinafter defined) on behalf of a NPI District in an amount equal to ONE MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,250,000.00); (ii) the date that PDC discovers any misuse of the Granted Revenues by the District Manager; (iii) the date that a NPI District is closed; or (iv) June 30, 2022 (the earlier of which is the “Term”). The “Total Funding” for each NPI District is comprised of the TIR for the NPI District collected by PDC, the Granted Revenues, and the City’s Granted Revenues.

In allocating revenues to the NPI Districts, the TIR shall be applied first towards reaching the Total Funding. If the TIR in the final year is insufficient to reach the Total Funding, the Granted Revenues and City Granted Revenues shall be applied pro rata toward reaching the Total Funding

Section 1.05 Use of Granted Revenues. The Parties agree that the Granted Revenue can be used by PDC for the following activities that support the goals of the NPI:

- TIF eligible activities.
- Business technical assistance.
- Working capital assistance.
- Place making improvements and maintenance.
- Building capacity for community organizations.
- District marketing and branding.
- Direct and indirect business expenses of the District Manager that are necessary and reasonable for management of the NPI District.
- PDC’s costs of administering the NPI Districts (“PDC Overhead”), provided that in each fiscal year during each NPI District’s Term, no more than 20% of the Granted Revenues for such fiscal year may be used for PDC Overhead.
- Other uses as first agreed in writing between PDC and the County.

Article II. Reports, Records and Inspection

Section 2.01 Reporting. Commencing on September 1, 2014, and concluding on the September 1 following termination of this Agreement, PDC shall deliver to the County a report that includes the following information for the preceding 12 months ending June 30:

- the amount of TIR received by PDC for each NPI District;

- the amount of TIR distributed by PDC to each NPI District;
- the amount of Granted Revenues received by PDC for each NPI District;
- the amount of City Granted Revenues received by PDC for each NPI District;
- the amount of combined Granted Revenues and City Granted Revenues distributed by PDC to each NPI District, net of PDC Overhead; and
- the approved budget, approved budget amendments, fourth quarter financial statement and yearend report of accomplishments for each NPI District.

Section 2.02 PDC shall maintain all fiscal and other records pertinent to this Agreement or to the NPI Districts for at least three (3) years following the Termination Date (as hereinafter defined). PDC shall maintain all fiscal records relating to this Agreement and the NPI Districts in accordance with generally accepted accounting principles and in a manner that clearly documents when and how the Granted Revenues were used. PDC shall make any or all of the foregoing records available to the County and its representatives, as the County may reasonably request from time to time, to enable the County to perform examinations and audits and make excerpts and transcripts, provided that any such examinations and audits shall be at the County's sole expense.

Article III. Oversight and District Manager Records

Section 3.01 PDC shall enter into grant agreements with the District Manager for each of the proposed NPI Districts (each, a "Grant Agreement"). The Grant Agreement shall set forth the terms and conditions of each NPI District's revenues, including the Granted Revenues and shall stipulate the uses for such funds consistent with Section 1.05 hereof. PDC shall provide technical assistance and oversight for each NPI District pursuant to the Grant Agreement. PDC shall provide the County with a copy of the Grant Agreement or other records associated with the Grant Agreement upon request of the County.

Section 3.02 The Grant Agreement shall require that each District Manager shall maintain all fiscal and other records pertinent to the Granted Revenues for at least three (3) years following the Termination Date. The Grant Agreement also shall require that all fiscal records relating to the Granted Revenues be maintained in accordance with generally accepted accounting principles and in a manner that clearly documents when and how the Granted Revenues were used. Without limiting the generality of the foregoing, the Grant Agreement shall require that each District Manager retain substantiating documents (e.g., detailed receipts, invoices, contracts, etc.) for all expenditures of Granted Revenues and that Granted Revenues may only be disbursed in accordance with Section 1.05 hereof and upon the review and approval of PDC. The Grant Agreement shall require that the District Manager make any or all of the foregoing records available to the County and its representatives, as the County may reasonably request from time to time, to enable the County to perform examinations and audits and make excerpts and transcripts, provided that any such examinations and audits shall be at the County's sole expense.

Article IV. General

Section 4.01 Notices. Any notice provided for under this Agreement shall be in writing and deemed delivered five days after mailing, postage prepaid and properly addressed to the Party to be notified. Unless a Party changes its address by giving notice to the other party as provided herein, notices shall be addressed as follows:

If to PDC:

If to County:

Patrick Quinton
Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209

John Tydlaska
Office of the Chair
Multnomah County
501 SE Hawthorne Blvd., 6th Floor
Portland, OR 97214

Section 4.02 Agreement Administration. Patrick Quinton is the PDC project staff person assigned to this Agreement and is authorized to administer it on behalf of PDC. John Tydlaska is the County project staff person assigned to this Agreement and is authorized to administer it on behalf of the County.

Section 4.03 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon. Any suit for enforcement shall occur, if in the state courts, in the Multnomah County Circuit Court, or if the action must be brought in federal courts, in the United States District Court for the District of Oregon.

Section 4.04 Assignment. Neither Party shall assign or transfer any interest in this Agreement, nor assign any claims for money due or to become due under this Agreement, without the prior written approval of the other Party. This Agreement shall bind and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns.

Section 4.05 No Third Party Beneficiaries. This Agreement is between the Parties and creates 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.

Section 4.06 Relationship of Parties. 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.

Section 4.07 Time is of the Essence. Time is of the essence in performance of this Agreement.

Section 4.08 Counterparts. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on both Parties, notwithstanding that both Parties are not signatories to the same counterpart.

Section 4.09 Material Breach. If the County or PDC breaches any material term or provision of this Agreement and such breach remains uncured sixty (60) days after written notice thereof to the breaching party, then the non-breaching party may pursue any right or remedy that it may have, under this Agreement, at law or in equity, for the breach of this Agreement, including but not limited to, monetary damages. Material terms of this Agreement include, but are not limited to, Sections 1.05, 1.06, 2.01 and 3.02 and, in addition to the rights set forth in the first sentence of this Section 5.09, in the event of (i) a breach of Sections 1.05, 1.06, 2.01 or 3.02 or (ii) the failure of a District Manager to comply with the provisions of the Grant Agreement described in Sections 3.01 and 3.02, then, if such breach or failure remains uncured 60 days after written notice thereof to PDC, the County may send a notice of termination to PDC and this Agreement shall terminate automatically upon delivery as set forth in Section 5.01.

Section 4.10 Integration, Amendment and Waiver. This Agreement constitutes the entire agreement between the Parties. There are no understandings, agreements or representations, oral

or written, not specified herein regarding this Agreement. No amendment, consent or waiver of terms of this Agreement shall bind either Party unless in writing and signed by all Parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given. The Parties, by the signatures below of their authorized representatives, acknowledge having read and understood this Agreement and agree to be bound by its terms and conditions.

Section 4.11 PDC Obligation to Indemnify. To the extent permitted by law and within the limitations of the Tort Claims Act, PDC shall defend, save, hold harmless, and indemnify the County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of PDC or its officers, employees, subcontractors, or agents under this Agreement. However, neither PDC nor any attorney engaged by PDC shall defend the claim in the name of the County or any department of the County, nor purport to act as legal representative of the County or any of its departments, without first receiving from the Multnomah County Attorney's Office, authority to act as legal counsel for the County, nor shall PDC settle any claim on behalf of the County without the approval of the Multnomah County Attorney's Office. The County may, at its election and expense, assume its own defense and settlement.

Section 4.12 County Obligation to Indemnify. To the extent permitted by law and within the limitations of the Tort Claims Act, the County shall defend, save, hold harmless, and indemnify PDC and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of the County or its officers, employees, subcontractors, or agents under this Agreement. The County shall have control of the defense and settlement of any claim that is subject to this paragraph. However, neither the County nor any attorney engaged by the County shall defend the claim in the name of PDC or any department of PDC, nor purport to act as legal representative of PDC or any of its departments, without first receiving from PDC's General Counsel, authority to act as legal counsel for PDC, nor shall the County settle any claim on behalf of PDC without the approval of PDC's General Counsel's Office. PDC may, at its election and expense, assume its own defense and settlement.

Section 4.13 Adherence to Law. Each Party shall comply with all federal, state and local laws and ordinances applicable to this Agreement.

Section 4.14 Nondiscrimination. Each Party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local nondiscrimination ordinances.

Section 4.15 Severability. If any terms 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 shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision to be held invalid.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date, by their duly authorized representatives.

PDC:

By: _____
Patrick Quinton, Executive Director

Approved as to Form:

By: _____
Lisa Gramp, PDC Assistant General Counsel

COUNTY:

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

By: _____
Jeff Cogen, Chair

Approved as to Form:
JENNY M. MORF, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By: _____
Jed Tomkins, Assistant County Attorney