CONTRACT # 4600008373

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 P. 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), $842,000 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 $5,257,000.

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 Two Thousand Dollars ($2,842,000) 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 constitutes 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 pertaining to the Project, 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 $5,257,000; re-pay the difference to the County if the If the actual project cost is less than $5,257,000.

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.

m. **Comply with IGA Requirements.** Construct the project in accordance with the terms and conditions of the Intergovernmental Agreement attached hereto as Exhibit 1, including the requirement that funds provided by PDC be spent only for the purposes listed in ORS 457.170; maintain and provide to the County on request detailed records showing how all funds provided to CCC under this agreement were spent and, in particular, showing that the PDC funds provided under this agreement were spent in accordance with the requirements of the IGA.

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

By: ____________________
Typed Name: Marissa D. Madrigal
Title: Chief of Staff 6.28.2010

Address where notices are to be sent:

Attn.: ____________________
Telephone: ____________________
Facsimile: ____________________

CONTRACTOR:

CENTRAL CITY CONCERN, INC.,
an Oregon corporation

By: ____________________
Typed Name: Ed Blackburn
Title: Executive Director

Address where notices are to be sent:

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

Exhibit 1

INTERGOVERNMENTAL AGREEMENT
DAVID P. HOOPER DETOXIFICATION CENTER

This Intergovernmental Agreement (this "Agreement") is entered into on June 30, 2010 (the "Effective Date") between Multnomah County, Oregon (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 City of Portland, PDC and the County desire to redevelop and renovate the David P. Hooper Detoxification Center (the "Center") located at 20 N.E. Martin Luther King Jr. Blvd in the Central Eastside Urban Renewal Area (the "URA").

B. In 2006, the Portland City Council approved certain amendments to the URA that included increases to the URA's Maximum Indebtedness.

C. As part of the public participation used to develop such amendments, a citizen advisory committee recommended a series of investments including two million dollars ($2,000,000) from PDC to the County to be used for the renovation of the Center. PDC contributed $75,000 of the recommended $2,000,000 to the County for predevelopment work for the Center in fiscal year 2008-09.

D. Funding for renovation of the Center was identified and requested by the County Board of Commissioners to specifically address a critical community need for a Crisis Assessment and Treatment Center (the "Crisis Center") serving individuals experiencing a mental health crisis who cannot manage their symptoms on their own and do not need a hospital stay to become stable within the Center.

E. On May 26, 2010, the PDC Board of Commissioners authorized the PDC Executive Director to enter into this Agreement to provide the remainder of the recommended funding to the County for the Center.

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 – THE GRANT

Section 1.01 PDC Grant. Subject to the terms and conditions of this Agreement, PDC shall provide County with a grant to fund construction of the Crisis Center and other tax increment revenues eligible improvements to the Center, as such improvements are further described in Exhibit A attached hereto and incorporated herein by this reference (collectively, the "Project"), in an amount not to exceed one million nine hundred twenty-five thousand dollars ($1,925,000) (the "PDC Grant"). Chapter 457. For purposes of this Agreement, the foregoing costs include a contribution, in an amount up to 2% of the PDC Grant (the "RACC Contribution"), to the

Regional Arts and Culture Council for public art, as required by Chapter 5.74 of the Portland City Code.

Section 1.02 Disbursement of PDC Grant. PDC shall disburse the PDC Grant for the Project as follows: PDC shall withhold the RACC Contribution of $38,500, and shall disburse the remaining balance of the PDC Grant ($1,886,500) to County in a single lump sum after County's presentation to PDC of an invoice therefore. PDC shall pay the required RACC Contribution to RACC from the funds withheld and in accordance with PDC practice.

Section 1.03 County invoices shall be submitted in an original and two copies to:

Keith Witcosky
Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209

Section 1.04 The County is authorized to pay the funds to Central City Concern, Inc. ("CCC") at any time after the date of receipt of the funds provided such payment is pursuant to an agreement with CCC for redevelopment of the Center in accordance with Exhibit A. The terms of the agreement with CCC shall be determined in the sole discretion of the County. To the extent that CCC fails to utilize the PDC Grant in accordance with this Agreement, the County shall repay to PDC Grant to PDC in accordance with Section 2.02.

ARTICLE II – RECAPTURE OF PDC GRANT

The County shall not be required to repay the PDC Grant except as follows:

Section 2.01 Unexpended Funds. If any portion of the PDC Grant disbursed to the County remains unexpended at completion of the Project, the County shall promptly repay such portion to PDC, together with interest earned on such portion from the investment of such portion pursuant to Section 1.04 above.

Section 2.02 Impermissible Use of PDC Grant. If any portion of the PDC Grant disbursed to the County is used in a manner not permitted by this Agreement, including any misuse thereof by CCC, the County shall, upon PDC's demand, repay such portion to PDC, together with the interest such funds would have earned had they been invested in an interest bearing account consistent with the County's cash management policies for similar funds as of the date the funds were received.

ARTICLE III – RECORDS, INSPECTION AND REPORTING

Section 3.01 Records and Inspection. The County shall maintain all fiscal and other records pertinent to this Agreement or to the Project for at least three (3) years following completion of the Project. The County shall maintain all fiscal records relating to this Agreement and the Project in accordance with generally accepted accounting principles and in a manner that clearly documents when and how the PDC Grant was used. In addition, the County shall maintain all other records pertinent to this Agreement in such a manner as to clearly document its performance hereunder. The County shall make any or all of the foregoing records available to PDC and its representatives, as PDC may reasonably request from time to time, to enable PDC to perform examinations and audits and make excerpts and transcripts, provided that any such examinations and audits shall be at PDC's sole expense. In addition, the County shall permit PDC and its representatives to inspect the Project, and the work performed as a part thereof, as PDC may reasonably request from time to time.

Section 3.02 Reporting. The County shall inform PDC in writing when the Project is completed. Promptly after completion of the Project, the County shall provide to PDC documentation of the use of the PDC Grant, including copies of paid invoices, accounting records and other documents that PDC may reasonably request.

ARTICLE IV - TERMINATION

Section 4.01 This Agreement shall terminate upon the completion of the Project. Sections 3.01 and 6.4 shall survive termination of this Agreement.

ARTICLE V – COMPLIANCE WITH PREVAILING WAGE LAWS AND PDC POLICIES

Section 5.01 PDC and the County agree and acknowledge that, as a condition of the PDC Grant, the Project must comply with the following policies:

(a) Business and Workforce Equity Policy. The Project must comply with PDC's Business and Workforce Equity Policy attached hereto as Exhibit B and incorporated herein by this reference.(the "Policy"), As applicable, the County shall include the Policy requirements and aspirational goals in its contracts related to the Project and cause its contractors to comply with such requirements.

(b) Prevailing Wage Laws. The Parties agree and acknowledge that the Project is a "public work" as that term is defined in ORS 279C.800(5). As a result, state prevailing wage law will apply to the Project and County shall comply with state prevailing wage law in connection with the Project.

ARTICLE VI – GENERAL

Section 6.01 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:
Keith Witcosky
Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209

If to County:
David Hidalgo
Multnomah County
421 SW Oak Street
Portland, OR 97204

Section 6.02 Agreement Administration. Keith Witcosky is the PDC project staff person assigned to this Agreement and is authorized to administer it on behalf of PDC. David Hidalgo is the County project staff person assigned to this Agreement and is authorized to administer it on behalf of the County.

Section 6.03 Signs and Publicity. During construction of the Project, the County, at its expense, shall post at a visible location near the project a sign identifying PDC as providing project financing. The location and format of the sign shall be approved by PDC prior to its display.

Section 6.04 Indemnification. To the extent permitted by Oregon Law and within the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300), the County shall defend (if requested by PDC), indemnify and hold harmless PDC and PDC's commissioners, officers, agents, and employees against all claims, demands, actions and suits (and liability arising therefrom) brought against any of them arising from or related to the Project except that the County shall not be required to indemnify PDC or its commissioners, officers, agents or employees to the extent of their fault or negligence._ To the extent permitted by Oregon Law and within the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300), PDC shall defend (if requested by the County), indemnify and hold harmless the County and the County's commissioners, officers, agents, and employees against all claims, demands, actions and suits (and liability arising therefrom) brought against any of them arising from PDC's provision of the PDC Grant except that PDC shall not be required to indemnify the County or its commissioners, officers, agents or employees to the extent of their fault or negligence.

Section 6.05 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 6.06 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 6.07 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 6.08 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 6.09 Time is of the Essence. Time is of the essence of this Agreement.

Section 6.10 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 6.11 Material Breach. If the County or PDC breaches any material term or provision of this Agreement and such breach remains uncured 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.

Section 6.12 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.

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

CITY OF PORTLAND, ACTING BY AND THROUGH THE PORTLAND DEVELOPMENT COMMISSION

By: Sam? Rein for Bruce Warner
Bruce A. Warner, Executive Director

Date: 6/25/10

Approved as to Form:

By: ______________________
Lisa Gramp, PDC Assistant General Counsel

MULTNOMAH COUNTY, OREGON

By: Marissa Madrigal for Jeff Cogen
Jeff Cogen, Chair

Date: 6/25/2010

Reviewed:

AGNES SOWLE, COUNTY ATTORNEY FOR MULTNOMAH COUNTY

By: ______________________
John S. Thomas
Deputy County Attorney

EXHIBIT A

PROJECT SCOPE

Project Scope:

PDC's $1.925 million will fund the remodel of the Hooper Building at 20 NE Martin Luther King Blvd for the operation of a 16 bed crisis assessment and treatment facility for people experiencing mental health crisis.

Central City Concern (CCC) will conduct the remodel based upon agreed construction specifications negotiated between CCC and Multnomah County.

The project will be funded by a combination of PDC funds, New Market tax credits, State of Oregon general funds and Multnomah County general funds.

The services are scheduled to open April 2011 upon completion of the remodel.

EXHIBIT B

Business and Workforce Equity Policy

A. OBJECTIVES OF THE POLICY

The objective of the Business and Workforce Equity Policy (the "Policy") is to:

- ensure that the Portland Development Commission's ("PDC's") work provides professional, supplier and construction contracting opportunities to small businesses that have been historically under-utilized including businesses owned by People of Color and women and emerging small businesses (collectively, "M/W/ESBs") and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources including Interagency and Intergovernmental Agreements; and

- maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and women and encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

In this way, it is PDC's aim to ensure fair and equitable opportunities to Portland's diverse populations, promote prosperity in all segments of Portland's diverse communities, foster economic growth, and expand competition in the market.

The Policy replaces the existing policy adopted by the Board on December 18, 1997 (Resolution No. 5066) that authorized implementation of the Disparity Study Implementation Plan and policies concerning fair contracting and workforce training, including the Good Faith Effort Program and Workforce Training and Hiring Program.

The Policy objectives are pursued through the establishment of two separate and distinct programs.

- **The Business Equity Program**; and
- **The Workforce Equity Program.**

B. DEFINITIONS

1. **"Board"** means the PDC Board of Commissioners.

2. **"Business Financial Resource Tools"** means certain PDC business financal assistance programs including, but not limited to, the Quality Jobs Program, the Economic Opportunity Fund, the Direct Tax Increment Loan, and the EDA Revolving Loan and Real Estate Fund.

3. **"Certified Firms"** include M/W/ESB firms that have been certified by the State of Oregon as a minority-owned business, a women-owned business or an emerging small business.

4. **"DA" or "DDA"** means, respectively a Development Agreement or a Disposition and Development Agreement that is typically entered into by and between a developer and PDC that sets forth the terms and conditions of property conveyance, if any and the requirements for redevelopment of the property.

5. **"Direct Contracting"** includes all professional, supplier and construction services purchased directly by PDC.

6. **"Enterprise Zone"** is a 5-year, 100% tax abatement program designed to encourage existing and new industrial firms to invest in new capital outlays in certain designated areas. Participating firms are required to create or retain quality jobs while maximizing the economic benefits for residents of Portland who are currently earning at or below 80% Median Family Income

7. . **"Flexible Service Contract"** is a contract for services that has repetitive requirements on an as-needed basis and may include Personal Services Contracts that have such repetitive requirements.

8. **"Hard Construction Costs"** is the cost to build improvements on a property, including all related construction labor and materials, including fixed and built-in equipment costs. Costs not directly related to the construction of an improvement, such as entity overhead, administration or taxes, or other professional services including architectural or engineering, shall not be considered a part of the Hard Construction Costs.

9. **"Land Transactions"** is the sale of real property by PDC at any price for the purpose of a private or public project through a DDA .

10. **"PDC-Owned Construction Contracts"** include contracts where PDC has a direct contractual relationship with the contractor and where PDC is the owner of the project.

11. **"PDC Resources"** include:

    (i) PDC funds in the form of grants, loans or payments. For purposes of calculating PDC Resources, any PDC funds used by a single entity for a single project in the form of grants, loans or payments shall be combined to determine the total amount of PDC Resources; and

    (ii) The value of a Land Transaction. For purposes of calculating the value of a Land Transaction the value shall be that specified in the DDA..

12. **"PDC Sponsored Projects"** include all projects that are privately owned and constructed involving a disposition and development agreement, development agreement, loan agreement, or other type of financial assistance agreement with PDC.

13. **"People of Color"** as used in this Policy includes persons who self identify as being other than Caucasian.

14. **"Personal Services Contract"** is a contract for specialized skills, knowledge or unique resources in the application of highly-technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Such services include, but are not limited to the services of architects, engineers, surveyors, attorneys, auditors and

other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers.

15. **"Utilization Goal"** shall mean the percentage goals set for Certified Firms and workforce utilization on contracts and projects subject to the Policy.

16. **"Workforce Goals"** means the goals covering construction trades to utilize People of Color and women as a percentage if total construction hours worked in a PDC Project.

17. **"Workforce Training and Hiring Program"** means the Workforce Training and Hiring Program originally adopted by the Board on December 18, 1997 (Resolution No. 5066) and further amended on September 16, 1998 (Resolution No. 5171) and reauthorized on ___________, 2008 by Resolution No. _______ that pertains to apprentice utilization.

C. THE BUSINESS EQUITY PROGRAM

1. **Purpose of the Business Equity Program.** To ensure PDC provides professional, supplier and construction contracting opportunities to Certified Firms and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

2. **Applicability.** Direct Contracting entities, entities involved in a Land Transaction or entities receiving PDC Resources shall be obligated to comply with the Business Equity Program, upon meeting any one of the following criteria:

   a) A PDC Personal Services Contract for any amount;

   b) A PDC-Owned Construction Contract greater than $200,000;

   c) A PDC Sponsored Project receiving more than $300,000 of PDC Resources to finance a project with Hard Construction Costs greater than $300,000; or

   d) An interagency or intergovernmental agreement with Hard Construction Costs greater than $200,000 and more than $100,000 in PDC Resources, whether performed by PDC or another agency.

3. **Utilization Goals for Certified Firms.** The following Utilization Goals are established upon the initial adoption of the Policy. The Executive Director is responsible thereafter for annually reviewing the Utilization Goals, and is authorized to modify them based on such annual analysis:

   a) Personal Services Contracts: 25 percent of the payments made under such contracts;

   b) PDC-Owned Construction Contracts: 20 percent of Hard Construction Costs;

   c) PDC Sponsored Projects: 20 percent of Hard Construction Costs for residential low-rise construction and 20 percent of the Hard Construction Costs for commercial high-rise construction as calculated by an analysis of availability and capacity of Certified Firms for the specific project;

d) Interagency and Intergovernmental Agreements: the greater of the appropriate Utilization Goal for PDC or the other agency's goal; and

e) Flexible Service Contracts :

(i) 30 percent of the total number of contracts in any fiscal year; AND

(ii) 25 percent of the payments made under such contracts.

4. **Notice and Timing.** Should a party receive PDC Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the Business Equity Program, PDC (the project manager, with assistance from the M/W/ESB coordinator) may negotiate a Certified Firm participation level that is reasonable and may provide technical assistance to achieve that negotiated Utilization Goal. .

D. THE PDC WORKFORCE EQUITY PROGRAM

1. **Purpose of the Workforce Equity Program.**

a) To maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and women on Direct Contracting, Land Transactions and on work utilizing PDC Resources; and

b) To encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

2. **Applicability.** Direct Contracting entities, entities entering into a DA or DDA or entities receiving PDC Resources shall be obligated to comply with the Workforce Equity Program upon meeting any one of the following criteria:

a) On a PDC-Owned Construction Contract greater than $200,000, the Workforce Equity Program shall apply to:

(i) the prime contract; and

(ii) any subcontract greater than $100,000.

b) On a PDC Sponsored Project, the Workforce Equity Program shall apply if the project receives $300,000 or more of PDC Resources to finance a project with Hard Construction Costs greater than $1,000,000 and shall apply to:

(i) the prime contract; and

(ii) any subcontract greater than $100,000.

3. **Requirements.**

a) Projects subject to the Workforce Equity Program shall:

(i) Comply with the Workforce Training and Hiring Program to, among other things, ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed by the contractor and subcontractors are worked by state-registered apprentices, as such requirements are further described therein; and

(ii) Work toward achieving the Workforce Goals phased over a ten-year period as outlined in the table below. The percentage of hours set forth below includes both apprenticeship hours and journey level hours.

Workforce Goals

Fiscal Year	2008/ 2009	2009/ 2010	2010/ 2011	2011/ 2012	2012/ 2013	2013/ 2014	2014/ 2015	2015/ 2016	2016/ 2017	2017/ 2018
Female	6%	7%	8%	9%	10%	11%	12%	13%	14%	15%
People of Color	25.5%	26%	26.5%	27%	27.5%	28%	28.5%	29%	29.5%	30%

(iii) Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the unions, the apprenticeship programs and other community resources.

b) Projects subject to the Workforce Equity Program are encouraged to employ people with disabilities and veterans.

c) Project Apprenticeship and Equity Agreement:

Prior to the commencement of a PDC Sponsored Project that receives $300,000 or more in PDC Resources, PDC, the developer and the general contractor (collectively the "Contracting Parties") shall enter into an agreement that sets forth, among other things, a process to achieve the Workforce Goals and a plan for compliance with the Business Equity Program. Elements of the Project Apprenticeship and Equity Agreement shall include:

- A commitment to comply with the process set forth in the Project Apprenticeship and Equity Agreement to achieve the Workforce Goals.
- An acknowledgement that failure to comply with Project Apprenticeship and Equity Agreement process may result in an assessment of damages against the general contractor for each day of non-compliance.
- A commitment to comply with the Policy.
- An acknowledgement that failure to comply with the Policy may result in an assessment of damages against the general contractor for each day of non-compliance.

4. **Notice and Timing.** Should a party receive PDC Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the Workforce Equity Program, PDC (the project manager, with assistance

from the M/W/ESB Coordinator) may negotiate a level of compliance that is reasonable and may provide technical assistance to achieve that negotiated Workforce Goal.

E. **Equal Employment Opportunity Certification.** Contractors and subcontractors subject to the Policy must be certified by the City of Portland as an Equal Employment Opportunity Employer.

F. **Damages.** The procedural requirements of the Policy are contractual obligations. In the event that PDC determines, in its sole and absolute discretion, that the procedural requirements of the Policy have not been complied with, then PDC's finding may result in one or more of the following:

- a finding of breach of contract;
- disqualification of the developer, contractor or subcontractor to receive future PDC Resources or bid on future PDC solicitations;
- a claim for liquidated damages;
- withholding of progress payments.

G. **Administration.** The Executive Director shall develop and administer administrative Policies and/or guidelines, and make any determinations necessary, to implement and manage the Policy.

H. **Exemptions.**

1. The Policy shall not apply to projects within an Enterprise Zone or PDC Resources derived from Business Financial Resource Tools that are intended to be used for working capital or property acquisition..

2. Any other exemption or waiver of requirements of the Policy shall require approval of the Board.

I. **Annual Report.** The Executive Director or designee is responsible for preparing an annual report to the Board summarizing the accomplishments and activities that have occurred related to the implementation of the Policy