

CONSTRUCTION AID AGREEMENT

This **Construction Aid Agreement** (this “**Agreement**”) is made this ____ day of October, 2015 by and between **MULTNOMAH COUNTY**, a political subdivision of the State of Oregon (“**County**”), whose address is c/o Facilities and Property Management, Multnomah County, Oregon, 401 N. Dixon Street, Portland, Oregon 97227, and **HUMAN SOLUTIONS, INC.**, an Oregon non-profit, public benefit corporation (“**HSI**”), whose address is 12350 SE Powell, Portland, OR 97236.

RECITALS:

A. HSI is an Oregon non-profit, public benefit corporation. County’s Department of County Human Services (“DCHS”) has contracted with HSI for operation of a homeless family warming shelter (the “Shelter”) for the past several years. Until now, the Shelter has been housed in leased facilities, and HSI has been required to relocate the Shelter several times.

B. While working to site a year-round Shelter in a leased facility, HSI learned of the opportunity to purchase a property that includes a building that can serve as both an immediate and future family warming shelter, as well as additional land for potential development of affordable housing units.

C. County is prepared to make a loan to HSI in the sum of Three Hundred Thousand Dollars and no/100s (\$300,000.00) to be used as a down payment for HSI’s acquisition and improvement of the property, which is further described in **Exhibit A**, attached hereto and incorporated herein by reference (the “**Shelter Property**”).

C. County is also prepared to advance Three Hundred Ninety Seven Thousand Six Hundred Ninety Seven and no/100s Dollars (\$397,697.00) to HSI (the “**Construction Aid**”) to be used solely for reimbursement of HSI’s predevelopment, planning, design, project management and construction costs of capital improvements on the Shelter Property, all in compliance with applicable zoning and building regulations, to permit its licensed operation and occupancy as a Shelter, beginning February 1, 2016, or such earlier or later date when all required licenses and occupancy permits are issued (the “**Shelter Opening Date**”).

D. As a condition to disbursing the Construction Aid to HSI, County has required, and HSI has agreed to execute and deliver a Trust Deed encumbering the Shelter Property, in second position, subordinate to the first position trust deed encumbering the Shelter Property and securing HSI’s repayment of the purchase money loan from the Housing Development Corporation (“**HDC**”) Community Loan Fund LLC (the “**HDC CLF Note**”). HSI’s performance of its obligations under this Agreement will also be secured by the Second Trust Deed.

E. Copies of all reports, surveys, appraisals, plans, analyses, permits and permit

applications, documents and other work products (including but not limited to architectural, environmental, engineering, construction, financial and regulatory matters), relating to the Shelter, shall be furnished to County at the time that the request for reimbursement for the cost of any such document is submitted to County. Such items shall become the property of County in the event that the Shelter is not completed by HSI and may thereafter be used by County for any purpose.

AGREEMENTS:

In consideration of the foregoing, the parties agree as follows:

Section 1 Incorporation of Recitals and Exhibits

1.1 Recitals. The foregoing recitals are contractual and are incorporated into this Agreement by reference.

1.2 Exhibits. The exhibits referred to in and attached to this Agreement are contractual and are incorporated into this Agreement by reference.

Section 2 Representations and Warranties of HSI

2.1 Representations and Warranties of HSI. In order to induce County to enter into this Agreement and disburse the Construction Aid, HSI represents and warrants to County, as follows:

(a) HSI is (i) a duly organized non-profit, public benefit corporation under the laws of the state of Oregon, (ii) qualified to transact business in the state of Oregon, (iii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iv) has the full legal right, power, and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by HSI (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, note, or other instrument to which HSI is a party or by which it or the Shelter is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or to the knowledge of HSI, threatened against or affecting it, or any of its properties or rights, which if adversely determined,

might materially adversely affect HSI's ability to perform its obligations hereunder.

(d) This Agreement will be a valid and binding obligation of HSI, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or similar laws or general principals of equity affecting creditors' rights generally.

(e) The Shelter Property is properly planned and zoned for HSI's intended use.

(f) HSI is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

2.2 Effectiveness of Representations and Warranties. HSI represents and warrants to County that the representations and warranties set forth in Section 2.1 are true and will continue to be true until the conditions of this Agreement have been fully satisfied.

Section 3 Conditions to Funding Construction Aid

3.1 Prior to disbursement of funds under this Agreement, the following conditions shall be satisfied:

(a) The representations set forth in Section 2 shall be true and correct.

(b) Receipt by County of satisfactory evidence that the Shelter, when completed, will comply with all applicable zoning ordinances, building and use restrictions and codes, including any applicable variances, conditional use permits or similar exceptions, and evidence of the existence of necessary utilities and municipal services required to construct and operate the Shelter.

(c) Receipt by County of evidence of good standing in HSI's state of organization and of copies of resolutions of HSI authorizing receipt of the Construction Aid under the terms and condition set forth herein, and listing the individuals authorized to act on behalf of HSI.

(d) Receipt by County of a copy of HSI's determination letter from the Internal Revenue Service, in full force and effect as of the date hereof, determining that HSI is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

Section 4 Construction Aid Terms

4.1 Disbursement of Construction Aid. County will disburse to HSI the sum of

Three Hundred Ninety Seven Thousand Six Hundred Ninety Seven and no/100s Dollars (\$397,697.00).

4.2 Federal Funds. County represents that the funds to fund this Construction Aid are general funds of the County and were not funded from any federal source.

Section 5 Covenants of HSI

5.1 Covenants. HSI covenants to County that it will perform all of the covenants contained herein in accordance with all of the terms and conditions contained in this Construction Aid Agreement.

Section 6 Disbursement of Construction Aid Funds

6.1 Disbursement. The Construction Aid shall be used solely for reimbursement of predevelopment, design, entitlements, project management and construction costs of the Shelter incurred by HSI. Construction Aid funds shall be disbursed to HSI, upon satisfaction of the conditions set forth in Section 3 of this Agreement and upon receipt of invoices from HSI for reimbursement of such costs, accompanied by documentation of such costs incurred by HSI satisfactory to County and copies of any reports or other documents the cost of which is requested to be reimbursed. Disbursement of funds shall be made in the amounts of such invoices approved by County within thirty (30) days after County's receipt of the invoices and the required documentation and documents. Invoices shall not be submitted to County more frequently than once per month.

Section 7 Events of Default

7.1 Events. The occurrence of any one or more of the following shall be an event of default under this Agreement:

(a) HSI fails to perform or comply with any term, covenant or condition of this Agreement within 30 days after written notice from County to perform or satisfy the covenant or condition, or if the performance or compliance cannot be completed within such 30-day period through the exercise of reasonable diligence, the failure to commence the required performance or compliance with diligence to completion.

(b) HSI fails to comply with any requirement of any governmental authority having jurisdiction over the Shelter Property within 30 days after receipt of notice in writing of such requirement, or if such compliance cannot be completed within such 30-day period through the exercise of reasonable diligence, the failure to commence the required performance or

compliance with diligence to completion.

(c) Any representation or warranty herein or in any agreement executed under or in connection with this Agreement shall prove to have been false or misleading in any material respect.

(d) The occurrence of a default under any lien instrument secured by the Shelter Property or any agreement imposing restrictive covenants with respect to the Shelter Property that is not cured within any cure period provided in such lien instrument or agreement.

(e) The filing by HSI of a petition for relief under the Federal Bankruptcy Code, or any other applicable federal or state law or regulation, or the consent by it to the filing of any such petition or the consent to the appointment of a receiver, liquidator, assignee, trustee, or other similar official, of HSI, or of any substantial part of its property, or the making by HSI of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due or the taking of corporate action by HSI in furtherance of any such action.

(f) The commencement of an action against HSI seeking any involuntary bankruptcy, insolvency, reorganization, liquidation, dissolution or similar relief under any applicable federal or state law or regulation, which action is not dismissed within 60 days after commencement, or the appointment without the consent or acquiescence of HSI of any trustee, receiver or liquidator of HSI, or of all or any substantial part of the properties of HSI, which appointment is not vacated within 60 days after such appointment.

Section 8 Remedies

8.1 Remedies. If an event of default occurs, County may:

- (a) Withhold disbursement of Construction Aid funds.
- (b) Recover from HSI all previously disbursed Construction Aid funds.
- (c) Exercise or pursue any other remedy or cause of action allowed by law.

Section 9 Assignment

9.1 Assignment by HSI.

(a) HSI may not convey, assign, mortgage, pledge, transfer, hypothecate, encumber, or otherwise dispose of its rights or obligations under this Agreement without the

prior written consent of County. The decision whether to consent shall be made in the sole discretion of County unless otherwise provided herein. A breach of this provision, directly or indirectly, shall be an event of default and shall not vest any rights in the purported transferee.

(b) County shall not unreasonably withhold its consent to the transfer of the Shelter and the Shelter Property to a limited partnership of which HSI is the sole general partner for the purpose of syndicating the Shelter upon the following conditions:

(i) No default has occurred and is continuing under any term or condition of this Agreement, nor any condition or event that with the passage of time, or the giving of notice, or both, would constitute a default thereunder;

(ii) The limited partnership has assumed in writing, in form and substance acceptable to County, all obligations of HSI hereunder and, if executed, the lease between County and HSI and HSI has acknowledged in writing, in form and substance acceptable to County, that it is not released from any obligations under this Agreement, or if executed, under the lease;

(iii) HSI has given County not less than thirty (30) days prior written notice of its intent to transfer HSI's entire interest in the Shelter Property and the Shelter to the partnership.

(c) County shall not unreasonably withhold its consent to a transfer of the Shelter and HSI's interest in the Shelter Property to a general partner of HSI (the "General Partner") approved by County which approval shall not be unreasonably withheld, upon the following conditions:

(i) No default has occurred and is continuing under any term or condition of this Agreement;

(ii) The General Partner has assumed in writing, in form and substance acceptable to County, all obligations of HSI hereunder and, if executed, under the lease between County and HSI, and HSI has acknowledged in writing, in form and substance acceptable to County, that it is not released from any obligations under this Agreement, or if executed, under the lease; and

(iii) HSI has given County not less than thirty (30) days prior written notice of its intent to transfer HSI's entire interest in the Shelter Property and the Shelter to the partnership.

9.2 Assignment by County. County may assign its rights and obligations under this Agreement. Any such assignment shall be deemed to have been made pursuant to this Agreement and not in modification hereof.

Section 10

General Provisions

10.1 Time of the Essence. Time is of the essence of this Agreement.

10.2 Notices. All notices, demands, requests, or other communications between the parties shall be given in writing by mailing or delivering by private carrier such notice or other communication, postage or delivery charge prepaid, to the address of the parties first set forth above, or to such other addresses as the parties may in writing hereafter indicate.

10.3 No Waiver; Remedies Cumulative. No failure or delay on the part of County to exercise any right, power or remedy on the part of County shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof; nor shall the waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of County of any provision or condition of this Agreement must be in writing and shall be effective only to the extent set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to County, shall be cumulative and not alternative.

10.4 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. However, HSI shall not have the right to assign its rights hereunder or any interest except as provided in Section 9.1 of this Agreement.

10.5 Attorney's Fees. In the event HSI defaults hereunder, the undersigned promises and agrees to pay the reasonable costs of County to recover distributed Construction Aid funds. If suit or action is filed hereon, the undersigned also promises to pay County's reasonable attorney's fees, expenses, and costs in such suit or action or on any appeal there from, including, but not limited by, fees and expenses permitted or defined by statutory law, and including without limitation all fees and expenses incurred at trial, on appeal, on petition of review, in connection with arbitration or mediation, and in a bankruptcy proceeding of any nature.

10.6 Governing Law. This Agreement, and any other instruments or agreements required or contemplated hereunder, shall be governed by and interpreted in accordance with the laws of the state of Oregon, without regard to the conflict of law provisions of Oregon law.

10.7 Counterparts. This Agreement may be executed in two or more counterparts all of which shall constitute one agreement, binding on all parties hereto, even though all parties have not signed the same counterpart.

10.8 Integration. This Agreement, and any other instruments or agreements required or contemplated herein, constitute the entire agreement of the parties hereto. This Agreement, the note and the other instruments and agreements required or contemplated herein supersede all prior communications, representations or agreements, oral or written, among the parties hereto and shall not be amended except in writing by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

COUNTY:

MULTNOMAH COUNTY,

A political subdivision of the State of Oregon

By: _____
Deborah Kafoury, Chair

REVIEWED BY:

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By: _____
Kenneth M. Elliott
Assistant County Attorney

HSI:

HUMAN SOLUTIONS, INC.,
an Oregon non-profit, public benefit corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

Legal Description of the Shelter Property

PARCEL I:

The South 175 feet of Lot 12, Block 3, MEYERMEAD, in the City of Portland, Multnomah County, Oregon.

PARCEL II:

Lot 12, EXCEPTING THEREFROM the South 175 feet thereof, Block 3, MEYERMEAD, in the City of Portland, Multnomah County, Oregon.